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ABSTRACT

The federal contribution to higher education is discussed in terms of the evolution of its role from 1787 to 1958, the growing regulatory presence, the National Defense Education Act, the Higher Education Acts of 1963 and 1965, the 1972 Higher Education Amendments, and recent legislative actions. Specific chapter discussions cover the following: postwar trends, federal land grants for higher education, the Morrill Land Grant College Act, the G.I. Bill, federal research grants to universities, equal opportunity policies, the politics of regulation, Title IX, the Family Educational Rights and Privacy Act of 1964 (the Buckley Amendment), tuition tax credits, the Department of Education, policy analysis, constraints on the federal role, and speculation on the future. The following appear in tabular form: estimated expenditures of institutions of higher education, by source of funds, alternate years (1960-1976); estimated expenditures of different forms of federal aid by institutions of higher education, alternate years (1960-1970); trends in costs of implementing federally mandated social programs (1965-1975); total outlays for higher education, by source of funds, selected years (1939-1970); federal funds as a percentage of the total current income of universities and colleges, by control of institution (1939-1970); estimated expenditures of institutions of higher education, by source of funds, selected years (1960-1977); and the development of Washington representation in higher education. It is shown that the scope of the federal contribution to higher education has grown since World War II. In fiscal 1977, the federal budget for higher education was approximately $11.75 billion and growing. Including all major forms of aid, this constitutes about one-fifth of all funds spent by public institutions of higher learning and about one-third of total private school funds. (CC)

ED209977

A Commission Report

THE FEDERAL ROLE IN THE FEDERAL SYSTEM: THE DYNAMICS OF GROWTH

The Evolution of a Problematic Partnership: The Feds and Higher Ed

U.S. DEPARTMENT OF EDUCATION
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Washington, D.C. 20575 • May 1981

A-82

THE FEDERAL ROLE IN THE FEDERAL SYSTEM: THE DYNAMICS OF GROWTH

Volume I	**A Crisis of Confidence and Competence**
	1. The Question of Federalism: Key Problems
	2. Indicators of Federal Growth
	3. The Scope of the Federal Role Report
Volume II	**The Condition of Contemporary Federalism: Conflicting Theories and Collapsing Constraints**
	1. Alternative Perspectives on Federalism
	2. Breakdown of Constitutional Constraints; Interpretive Variations from the First Constitutional Revolution to the "Fourth"
	3. Government UnLocked: Political Constraints on Federal Growth Since the 1930s
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Volume III	**Public Assistance: The Growth of a Federal Function**
Volume IV	**Reducing Unemployment: Intergovernmental Dimensions of a National Problem**
Volume V	**Intergovernmentalizing the Classroom: Federal Involvement in Elementary and Secondary Education**
Volume VI	**The Evolution of a Problematic Partnership: The Feds and Higher Ed**
Volume VII	**Protecting the Environment: Politics, Pollution, and Federal Policy**
Volume VIII	**Federal Involvement in Libraries**
Volume IX	**The Federal Role in Local Fire Protection**
Volume X	**An Agenda for American Federalism: Restoring Confidence and Competence**
	1. American Federalism 1960–1980: Contrasts and Continuities
	2. The Dynamics of Growth in Federal Functions: An Analysis of Case Study Findings
	3. The Federal Role: Criteria, Assessment, and Analysis
	4. Issues and Recommendations
Volume XI	**Hearings on the Federal Role**

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Wayne F. Anderson
Executive Director

David B. Walker
Assistant Director

Foreword

The Advisory Commission on Intergovernmental Relations was established by Public Law 380, which was passed in the first session of the 86th Congress and approved by the President on September 24, 1959. Section 2 of the act sets forth the following declaration of purpose and specific responsibilities for the Commission:

> Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.
>
> It is intended that the Commission, in performance of its duties, will:
>
> (1) bring together representatives of the federal, state, and local governments for the consideration of common problems.
>
> * * * * *
>
> (5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation.
>
> (6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, re-

sponsibilities, and revenues among the several levels of government. . . .

Pursuant to its statutory responsibilities, the Commission has from time to time been requested by the Congress or the President to examine particular problems impeding the effectiveness of the federal system. Section 145 of the 1976 renewal legislation for *General Revenue Sharing*, P.L. 94-488, mandated that the Commission:

> . . . study and evaluate the American federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments, including, but not limited to, a study and evaluation of: (1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other federal government systems. . . . (5) forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.

The Commission's study, *The Federal Role in the Federal System: The Dynamics of Growth*, of which the present volume is one component, is part of the Commission's response to this mandate. Staff were directed to (a) examine the present role of the federal government in the American federal system; (b) review theoretical perspectives on American federalism, the assignment of functions, and governmental growth; and (c) identify historical and political patterns in the development and expansion of national governmental domestic activities. This case study on the federal role in higher education is one of seven prepared by Commission staff pursuant to this assignment.

Abraham D. Beame
Chairman

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Chapter 1

The Scope of Federal Involvement in Higher Education

The federal government has been involved in higher education since the founding of the Republic. Land grants for higher education were provided to the states throughout the 19th century. Other forms of limited federal assistance were gradually added (see Figure 1). Until the 1940s, however, the federal role remained a modest one. State and private institutions bore almost total responsibility for nearly all facets of higher education.

This situation has changed enormously since World War II. In fiscal 1977 the federal budget for higher education was approximately $11.75 billion and growing.[1] Including all major forms of aid, this constitutes about one-fifth of all funds spent by public institutions of higher learning and about one-third of total private school funds.[2]

Not only has the scope of federal involvement grown very large; it is also very broad. Federal aid comes in a variety of forms: aid to students, support for research, and programs of institutional assistance. Much of the aid comes through a host of programs with primarily educational aims, but even more comes from programs whose major purpose is other than education. All of it has enormous impact on the higher education community, both through the distribution of funds and through administrative conditions placed on grants. In addition, the federal government increasingly affects higher education through nonfiscal instruments, particularly through a variety of regulatory

Figure 1

FEDERAL PROGRAMS FOR HIGHER EDUCATION AND RELATED ACTIVITIES: 1787–1980

1787 Commencement of endowment of public institutions of higher education with public lands—Northwest Ordinance: "Schools and the means of education shall forever be encouraged."

1802 *Ohio Enabling Act*—established the provision of land grants and land scrip to new states under the statehood acts.

1802 Establishment of the first federal institution of higher education—U.S. Military Academy at West Point.

1862 The *First Morrill Act*—initiated federal policy of aid to states for agricultural and industrial education through land grants for colleges.

1867 Federal Department of Education established by Congress; later the Office of Education.

1887 *Hatch Act*—encouraged scientific investigation in agriculture.

1890 The *Second Morrill Act*—introduction of federal grants of money for college instruction in specified areas of learning.

1914 *Smith-Lever Act*—matching of funds for agricultural and home economics instruction through Agricultural Extension Service.

1935 National Youth Administration—employment for college students.

1935 *Bankhead-Jones Act*—increased support for land grant colleges.

1937 *National Cancer Institute Act*—provided fellowship grants.

1964 *Economic Opportunity Act of 1964* (P.L. 88-452)—war on poverty through retraining and remedial education and other opportunities; college work-study program.

1964 *Amendments to National Defense Education Act*—extended and expanded to include areas of English, reading, history, and geography.

1965 National Foundation for the Arts and Humanities (P.L. 89-209)—foundation to support humanities and the arts through grants.

1965 *Higher Education Act of 1965* (P.L. 89-329)—aid to colleges, students, and teachers.

1966 *International Education Act* (P.L. 89-698)—to provide a strengthening of American educational resources for international studies and research.

1967 *Education Professions Development Act* (P.L. 90-35)—to coordinate, broaden and strengthen programs for the training and the improvement of educational personnel.

1968 *Higher Education Amendments of 1968* (P.L. 90-575)—extended and improved four major education acts and authorized six new programs.

1971 *Comprehensive Health Manpower Training Act of 1971* (P.L. 92-257)—amended Title VII of the *Public Health Service Act.* Increased and expanded

1944 *The Serviceman's Readjustment Act—GI Bill,* educational aid for veterans.

1950 *The National Science Foundation Act*—promoted progress in science through scholarships and fellowships in fields of science.

1950 *The Housing Act*—low interest rates for loans to institutions of higher learning for building of housing facilities.

1952 National Science Foundation—fellowship program.

1954 *Cooperative Research Act*—authorized the Office of Education to conduct cooperative research with colleges, universities, and state educational agencies.

1958 *The National Defense Education Act* (P.L. 85-864)—provided for graduate fellowships in science, mathematics, foreign languages, counseling and guidance, educational technology.

1963 *Health Professions Educational Assistance Act* (P.L. 88-129)—construction of facilities and student loans.

1963 *Higher Education Facilities Act of 1963* (P.L. 88-204)—grants to all colleges, public and private, for improvement of facilities.

1964 *The Civil Rights Act of 1964* (P.L. 88-452)—desegregation of the schools enforced and assisted.

provisions for health manpower training and training facilities.

1972 *Education Amendments of 1972* (P.L. 92-318)—established a National Institute of Education. Federal matching grants for state student incentive grants; the National Commission on Financing Postsecondary Education; State Advisory Councils on Community Colleges; a Bureau of Occupational and Adult Education and state grants for the design, establishment, and conduct of postsecondary occupational education; and the bureau-level Office of Indian Education. Amended current Office of Education programs to increase their effectiveness and better meet special needs. Prohibited sex bias in admissions.

1975 *Harry S. Truman Memorial Scholarship Act* (P.L. 93-642)—scholarships promoting public service education.

1976 *Education Amendments of 1976* (P.L. 94-482)—reauthorized and amended major higher education legislation.

1979 *Department of Education Organization Act* (P.L. 96-88)—established the Department of Education.

1980 *Education Amendments of 1980* (P.L. 96-347)—reauthorized and amended major higher education legislation.

SOURCE: Sidney Tiedt, "Historical Development of Federal Aid Programs," in Roe L. Johns, Kern Alexander, and Dewey Stollar, eds., *Status and Impact of Educational Finance Programs, National Educational Finance Project, Volume IV,* Gainsville, FL, National Education Finance Project, 1971, pp. 238–240; and US Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1979,* Washington, DC, U.S. Government Printing Office, 1979, pp. 157–162.

Table 1

TOTAL OUTLAYS FOR HIGHER EDUCATION, BY SOURCE OF FUNDS, SELECTED YEARS: 1939–70 (in millions of dollars)

Academic Year	Total Outlays Public and Private	Total Public Outlays	Federal[1]	State	Local	Percent Public Outlays
1939–40	$ 922.5	$ 214.5	$ 38.9	$ 151.2	$ 24.4	23%
1949–50	2,782.0	2,075.2	1,521.4[2]	492.1	61.7	75
1959–60	5,567.0	2,856.6	1,298.0	1,406.8	151.8	51
1969–70	19,901.7	12,096.1	5,129.1	6,197.0	770.0	61

[1] Does not include federal aid to graduate students.
[2] Includes $993 million in *GI Bill* expenditures.

SOURCE: Carnegie Commission on Higher Education, *Higher Education: Who Pays? Who Benefits? Who Should Pay?*, New York, NY, McGraw-Hill, 1973, pp. 131–163. These figures were obtained by adding the institutional receipts for each level in each year, that proportion of direct student aid also derived from each level (as listed on page 162), plus that proportion of institutional student aid that derived from state and federal sources (assigned in the proportion of 10% state, 90% federal as suggested on pp. 131–132).

conditions ranging from health and safety to affirmative action.

POSTWAR TRENDS

Since World War II, college enrollments have increased steadily and dramatically, quadrupling between 1946 and 1974.[3] Total spending on higher education has risen proportionately. *Table 1* indicates that total public-private outlays in higher education increased from $920 million in 1939–40 to $19.9 billion in 1969–70. Total spending from public sources—federal, state, and local—has outstripped even this rapid rate of growth. The public sector has become increasingly important in supporting higher education, with its share growing from 23% in 1939–40 to 61% in 1969–70. *Table 1* shows clearly that this public-sector growth has come primarily from the state and federal governments. But whereas states have focused their efforts primarily on public state institutions, federal funds have come to play an increasingly important role in private institutions (particularly very large ones), as may be seen in *Table 2*.[4]

Although they accurately indicate general trends, the data just discussed are not entirely consistent and tend to seriously underestimate the federal role. Coming from such a wide variety of federal programs, many funds are difficult to trace. In an effort to obtain data which more accurately reflect the total impact of the federal role, published data have been supplemented with some excluded categories of federal higher education assistance. These estimates remain flawed in certain respects, but overall, they present a

Table 2

FEDERAL FUNDS AS A PERCENTAGE OF THE TOTAL CURRENT INCOME OF UNIVERSITIES AND COLLEGES, BY CONTROL OF INSTITUTION: 1939–70

	1939–40	1949–50	1959–60	1969–70
Private Institutions	0.7	8.6	19.4	20.7
Public Institutions	10.3	9.6	16.6	15.8

SOURCE: Chester Finn, "Federal Patronage of Universities in the United States," *Minerva* 14, Winter 1976–77, pp. 500–501.

Table 3

ESTIMATED EXPENDITURES OF INSTITUTIONS OF HIGHER EDUCATION, BY SOURCE OF FUNDS, SELECTED YEARS: 1960–77

Source of Funds by Level and Control	Amount, in Billions of Current Dollars									
	1960	1962	1964	1966	1968	1970	1972	1974	1976	1977
Public and Private Total[1]	$6.7	$8.5	$11.3	$15.2	$19.9	$24.7	$29.2	$34.3	$44.8	$49.2
Federal Total[2]	1.7	2.3	3.0	4.1	5.2	6.1	7.6	9.2	10.6	11.7[3]
Student Aid[2]	0.6	0.6	0.8	1.3	1.7	2.6	4.0	5.5	6.7	7.3[3]
Research[2]	0.9	1.4	1.6	2.2	2.4	2.5	2.8	3.2	3.4	4.4[3]
Institutional[2]	0.2	0.3	0.6	0.6	1.1	1.0	0.8	0.5	0.5	
State[1]	1.6	2.0	2.6	3.5	4.8	6.4	7.8	9.7	13.4	14.9
Local[1]	0.2	0.2	0.3	0.4	0.6	0.9	1.1	1.4	1.8	2.0
All Other[2]	3.2	3.9	5.4	7.2	9.3	11.3	12.7	14.0	19.0	20.6[3]
	Percentage Distribution									
	1960	1962	1964	1966	1968	1970	1972	1974	1976	1977
Public and Private Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Federal Total[2]	25.3	27.1	26.6	27.0	26.2	24.7	26.0	26.8	23.7	23.8
Student Aid[2]	8.9	7.1	7.1	8.5	8.5	10.5	13.7	16.0	15.0	14.8
Research	13.4	16.5	14.2	14.5	12.1	10.1	9.6	9.3	7.6	9.0
Institutional	3.0	3.5	5.3	4.0	5.6	4.1	2.7	1.5	1.1	
State	23.9	23.5	23.0	23.0	24.1	25.9	26.7	28.3	29.9	30.3
Local	3.0	2.4	2.6	2.6	3.0	3.6	3.8	4.1	4.0	4.1
All Other	47.8	45.9	47.8	47.4	46.7	45.8	43.5	40.8	42.3	41.8

[1] U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *The Condition of Education: 1977*, p. 181.

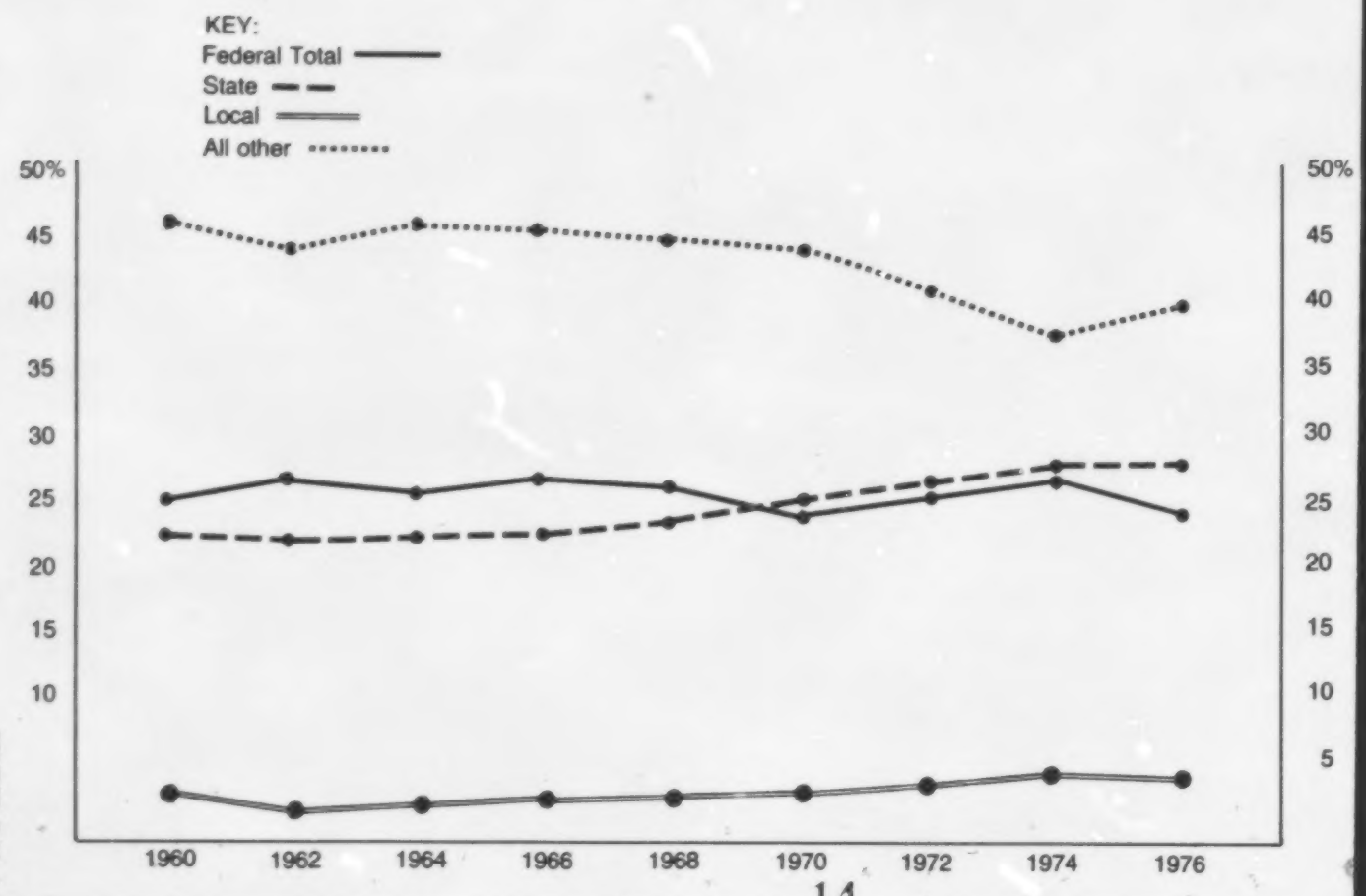
[2] Compiled from U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Projections of Education Statistics to 1984–85*, pp. 165–166.

[3] Compiled from Executive Office of the President, Office of Management and Budget, "Special Analysis J," *Special Analyses: Budget of the United States Government: Fiscal Year 1979*.

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *The Condition of Education: 1977*, Washington, DC, U.S. Government Printing Office, 1978, p. 181; U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Projections of Education Statistics to 1984–85*, Washington, DC, U.S. Government Printing Office, 1976, pp. 165–166; Executive Office of the President, Office of Management and Budget, "Special Analysis J: Education," *Special Analyses: Budget of the United States Government: Fiscal Year 1979*, Washington, DC, U.S. Government Printing Office, 1978. The figures from *The Condition of Education: 1977* are used exactly as they appear, with the exception that new estimates of federal expenditures have been substituted. The estimates derived from *Projections* were arrived at as follows: to the category "Higher Education" in Table B-9, p. 165, we have added the following additional categories from p. 166: "Veteran's Education," "Loans, Total (Higher Education)," "Applied Research and Development," and "U.S. Academies." The major problems in doing this are (1) part of the category "Veteran's Education" probably goes into technical schools rather than higher education; and, (2) adding total applied research may overstate this category. These problems are balanced by our inability to add other categories of Table B-9, such as "Training of Federal Personnel." Our figures, therefore, continue to underestimate total federal spending on higher education. For example, a comprehensive analysis of higher education financing in 1971–72 found total federal spending to be $8.1 billion, compared with our total of $7.6 billion (National Commission on the Financing of Postsecondary Education, *Financing Postsecondary Education in the United States*, Washington, DC, U.S. Government Printing Office, 1973, p. 67). Similarly, in his excellent comprehensive analysis of federal spending on higher education, Chester Finn estimated the 1976 federal total to be $12.6 billion, compared to the total here of $11.7 billion. Chester Finn, *op. cit.*, p. 500.

Graph 1

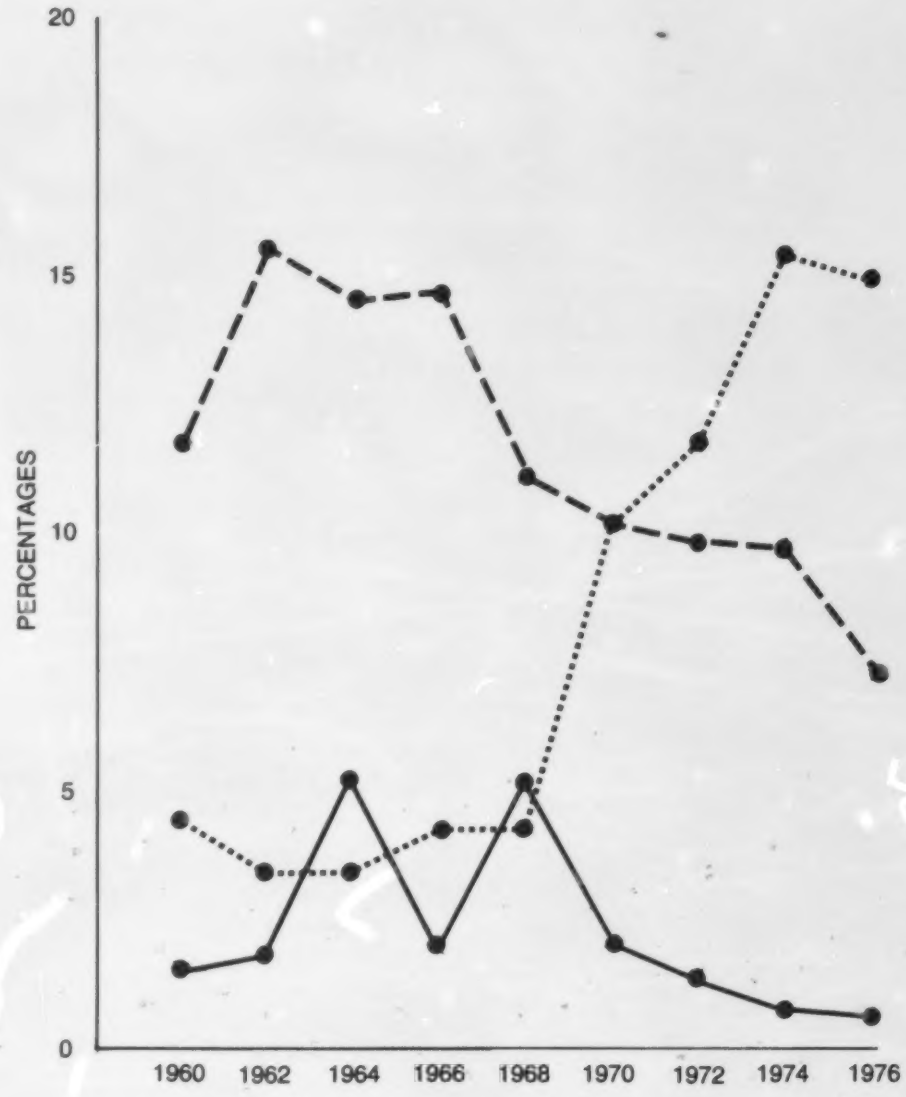
ESTIMATED EXPENDITURES OF INSTITUTIONS OF HIGHER EDUCATION, BY SOURCE OF FUNDS, ALTERNATE YEARS: 1960–76
(percentage distribution)



SOURCE: Table 4.

Graph 2

ESTIMATED EXPENDITURES OF DIFFERENT FORMS OF FEDERAL AID BY INSTITUTIONS OF HIGHER EDUCATION, ALTERNATE YEARS: 1960–70
(percentage distribution)



SOURCE: *Table 4.*

more comprehensive portrait of the federal higher education effort.

With these limitations in mind, *Table 3* shows federal, state, and local expenditures on higher education from 1960 to 1977. It is clear from these figures that expenditures on higher education have continued to grow rapidly during the past 15 years. Moreover, while both federal and state expenditures have grown, recent state spending has outpaced that of the federal government (see *Graph 1*). The federal role, while extremely important in the postwar era, remains supplementary to the states. As Ira Sharkansky observes: "Of all the services that are supported by state funds, the state governments have most clearly taken command of higher education."[5]

THE COMPOSITION OF THE FEDERAL ROLE

Federal aid to higher education differs significantly in form from state aid. Whereas state aid tends to be general institutional support to state institutions, federal assistance is mainly directed at particular national purposes, such as aid to low income students and support of scientific research. Indeed, a Library of Congress study in 1975 counted 439 separate authorizations that touch on postsecondary education.[6] Although most of these are small and not all receive appropriations, the degree of program specificity is remarkable.

These various components of federal aid to higher education have changed enormously over the years. To begin with, federal aid to students, as opposed to research and institutional grants, has become a progressively larger proportion of total federal assistance. Student aid, which constituted about 35% of federal aid in 1960, amounted to 63% in 1976[7]. (See *Graph 2*.) Other changes in the composition of federal aid have included:

- Equal Education. Within federal student assistance, a totally new emphasis on promoting equal educational opportunity has arisen since the mid 1960s. Whereas in 1968 the federal government expended $215 million for such purposes (4%),[8] by 1979 it spent an estimated $2.7 billion toward this end (21%)—more than a ten-fold increase in as many years.[9] In addition to increased expenditures, equal opportunity has become the focus of major federal regulatory efforts.

- Veteran's Readjustment. For several years, the largest federal student assistance program was the *Veteran's Readjustment Act*. After being phased out in the early 1960s, the *GI Bill* was reenacted in 1966 for veterans of the Vietnam War. It grew very rapidly for several years, reaching a peak of $4.3 billion in 1976. Since then, it has declined just as rapidly, with estimated expenditures of $2 billion in FY 1979.[10]

- Military and Health Research. Federal grants for research have changed as dramatically over the years as has aid to students. In the 1940s and 1950s, this category of spending was dominated by military research, but this is no longer true. During the mid 1960s, space-related research became very important but subsequently declined. Research on health, meanwhile, has risen steadily through the years, now constituting around 50% of all federally supported research in colleges and universities.[11]

Federal involvement in higher education, then, continues to be an evolving phenomenon. Untouched by these budgetary figures are other elements of a changing federal role, particularly the growing use of regulations and grant conditions, largely for new purposes. These have become increasingly important in recent years, enlarging both the scope and salience of federal involvement. All of these elements of federal involvement—its scope, form, distribution, and goals—reflect a number of evolving causal factors that have helped to determine the way in which the current federal role has developed. It requires a look at political history to help identify what these factors have been, the roles that they have played, and what they imply for the future.

FOOTNOTES

[1] Actual outlays in 1977 derived from: Executive Office of the President, Office of Management and Budget, "Special Analysis J: Education," *Special Analyses: Budget of the United States Government: Fiscal Year 1979*, Washington, DC, U.S. Government Printing Office, 1978. With the exception that tax expenditures have not been included, these figures were compiled in accordance with the method used by Chester

Finn, "Federal Patronage of Universities in the United States," *Minerva* 14, Winter 1976–77, pp. 500–501.

[3] Thomas Wolanin and Lawrence Gladieux, "The Political Culture of a Policy Arena: Higher Education," in Matthew Holden, Jr., and Dennis L. Dresang, eds., *What Government Does*, Beverly Hills, CA, Sage, 1975, p. 184.

[4] U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics, 1974*, Washington, DC, U.S. Government Printing Office, 1975, p. 75.

[5] The figures used here must be interpreted cautiously since certain funds are frequently underestimated. This is particularly true of federal research funds and direct aid to students. Because some of these funds are not primarily intended for educational purposes, different sources variously omit considerable portions of this federal assistance in spite of its substantial educational impact. For example, the figures used in *Table 1* do not include federal assistance to graduate students, which in 1973 amounted to $680 million. Carnegie Commission on Higher Education, *Higher Education: Who Pays? Who Benefits? Who Should Pay?*, New York, NY, McGraw-Hill, 1973, p. 95. The data reported in *Table 2* reflect total federal aid even less accurately since they are derived from institutional receipts. A great deal of federal assistance to students is reported as income derived from students rather than from government. When federal student assistance is figured in, as with aid to veterans in 1949–50, the federal share rises substantially.

[6] Ira Sharkansky, *The Maligned States*, New York, NY, McGraw-Hill, 1972, p. 82. Although the federal financial role is secondary in terms of aggregate spending, the higher education community is diverse. Certain classes of institutions—major research universities, various private schools, and many predominantly black institutions—are particularly dependent on federal assistance vis-a-vis the states.

[7] Robert Andringa, "The View from the Hill," in *Federalism at the Crossroads*, Washington, DC, Institute for Educational Leadership, 1977, p. 73.

[8] Calculated from *Table 3*.

[9] U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Projections of Education Statistics to 1984–85*, Washington, DC, U.S. Government Printing Office, 1976, p. 169, from Table B-10: "Office of Education Expenditures, by Legislative Program: Fiscal Years 1960 to 1976." Estimate includes the programs of "Equal Opportunity Grants" and "Work-Study Program and Cooperative Education."

[10] "Special Analysis J," *op. cit.*, p. 217. Table J-2, including "Basic Opportunity Grants," and "Work-Study and Supplementary Grants, Student Incentive Grants."

[11] Finn, *op. cit.*, and *Ibid.* See also "Federal Student Aid and How It Grew," *Chronicle of Higher Education*, October 11, 1978, p. 5.

[12] "Special Analysis P: Research and Development," in *Special Analyses: Budget of the United States Government: Fiscal Year 1979*, *op. cit.* p. 313.

Chapter 2

The Evolution of a Federal Role: 1787–1958

A NATIONAL UNIVERSITY

The earliest consideration given to federal involvement in higher education concerned establishment of a national university. Proposals to found such an institution gained prominence at several junctures in American history, beginning in the 1780s. One proposal, which sought creation of a national university to cap state and local educational systems, was rejected at the Constitutional Convention. As it was ratified, the Constitution contained no mention of education at all.

Although some felt it required a Constitutional amendment, the first six Presidents all endorsed the concept of a national university. George Washington even left a bequest in his will toward its establishment. Congress, however, opposed the idea. It viewed the matter as strictly a state responsibility for which the federal government lacked Constitutional authority for direct involvement. As George Rainsford writes: "In spite of the prestige and persuasiveness of its supporters, a national university failed to materialize. . . . [S]trict construction views of the Constitutional power of the federal government prevented the creation of a national system of education."[1] With the ascendance of the highly localistic Jacksonian Democrats, the fate of this proposal was sealed. Eventually, Columbia College (predecessor to George Washington University) was founded in the District of Columbia, but it was intended as a facility

for the residents of the federal district rather than for the nation as a whole.

There was a resurgence of interest in creating a national university in the late 1800s. Presidents Grant and Hayes lent their support to the idea. By this time, however, several eastern colleges were developing their own graduate schools, and they opposed the concept as redundant and competitive.[2]

FEDERAL LAND GRANTS FOR HIGHER EDUCATION

Federal land grants for higher education were more successful. They began early on with the allotment of two townships for this purpose to Ohio, upon its admission as a state in 1802. This established a precedent, and similar grants were negotiated with other states as they entered the Union. In all, 45 states eventually benefited from such grants of federal land or land scrip.[3]

These grants served to stimulate the early development of higher education in the states, but Constitutional scruples and practical politics greatly diluted their impact. To begin with, concern with the public land instrument largely overshadowed the educational aims of these grants. Congress wished to dispose of the lands quickly and easily, the states were eager to receive land proceeds under any pretext, and it was hoped that promoting education would encourage settlement.[4] Moreover, there was "almost complete absence of federal control over the use of these grants."[5] They were often grossly mismanaged by the states, resulting in low proceeds for their educational recipients.

THE MORRILL LAND GRANT COLLEGE ACT

A more significant form of federal aid to higher education was enacted in the *Morrill Act of 1862*, which established the system of land grant colleges. Under this law, federal lands and land scrip were distributed among the states—in rough proportion to their population—to "establish colleges for the benefit of agriculture and mechanic arts."

The act was a crucial step in the evolution of a federal role in higher education. The grant-in-aid technique was utilized to lessen political and Constitutional objections to federal involvement. A national purpose was specified, and the grants served as incentives to stimulate state activity on its behalf. In the process, the basic pattern of incremental federal involvement into higher education—in the form of categorical programs for specific national interests—was established.

Justin Morrill, a Vermont Republican and the chief sponsor of the act, initially proposed a more direct federal role in promoting agricultural education. In 1856 he introduced legislation to establish one or more "national agricultural schools," similar to the national military academies.[6] Meeting strong opposition from southern Democrats in Congress, his proposal went nowhere.

The following year, Morrill introduced a different bill, similar to the one passed in 1862, which provided land grants to the states on behalf of agricultural and mechanical education. Again, primary opposition arose from southern Democrats who found the concept threatening and unconstitutional. They regarded the federal grants as an interference with state responsibilities and unauthorized by the Constitution.[7] One southern Senator attacked the bill as "one of the most monstrous, iniquitous, and dangerous measures which have ever been submitted to Congress."[8]

The bill narrowly passed both Houses of Congress, with support divided along party and sectional lines. However, President Buchanan issued a "resounding" veto, calling the bill "unconstitutional and inexpedient." Although he added objections based on public lands policy, Rainsford concludes that, "principally . . . the President considered the act unconstitutional for all the reasons that southern states' righters had reiterated since the time of Jackson."[9]

When the bill was reintroduced in 1861, circumstances had drastically changed. The southern states had seceded from the Union, and the activist Republican Party had come to power under a new President. Morrill's new legislation excluded the secessionist states, and a requirement was added that recipient schools teach military tactics.

This time around, the center of controversy was public lands policy. Many westerners opposed the distribution of land scrip to the eastern states and feared the effects of the law on land prices. But the bill passed both Houses by wide margins,

appealing to those who "were not necessarily sympathetic with the antislavery base of the Republican party but wh[o] were not attracted by the anticentralism of the Democrats."[10] Moreover, while the act represented "the work of middle-class reformers" and "had little to do with . . . pressure from farmers and workingmen's associations," its appeal to the great agricultural population was unmistakable.[11]

Although farmers and their spokesmen did not initiate the *Morrill Act*, they rapidly became major supporters of it. Soon after its passage, both agricultural organizations and the land grant colleges began to lobby for additional federal aid, particularly in support of agricultural research:

> As early as 1871 the main theme at conventions of land grant institutions was the need in the United States for . . . experiment stations associated with the land grant colleges. . . . By 1872 agricultural societies . . . had turned to the federal government for assistance in establishing and running . . . experiment stations.[12]

A number of states became involved in agricultural research after 1875, but financing remained a problem. Continued pressure for federal assistance resulted in numerous legislative proposals in the 1880s and the eventual passage in 1887 of the *Hatch Act*, which provided annual subsidies of $15,000 per year to agricultural experiment stations associated with land grant colleges in the states. Additional grants to these colleges were adopted in the second *Morrill Act* three years later.

Until almost 1960, the contours of federal assistance to higher education followed the fundamental patterns that were established in these original acts. To minimize constitutional objections, federal participation took the form of grants-in-aid. Political constraints on broad federal involvement produced a series of narrow, categorical programs directed at specific problems. Generally, these have been areas in which opposition has been muted due to the pressing nature of a problem or its high visibility and unquestionable national character. Once a program has been enacted, this original support tends to be reinforced by the efforts of beneficiaries.[13]

Although educational institutions and issues were involved, the primary purpose of most of the early "higher education programs" was not education at all but, rather, some additional national interest. Education has generally been involved in an instrumental sense. For example, concern with the sale and distribution of the public domain largely overshadowed the educational interest in the early land grants.[14] Similarly, the promotion and dissemination of agricultural research through the agricultural experiment stations and the extension service were the focus of the later programs. During the 1930s, federal funds were temporarily expended on college work-study arrangements under the National Youth Administration as part of the federal government's broad response to the economic emergency. In each case, moreover, the federal role was strictly supplementary to that of the states and the private sector. Nevertheless, the programs did have an important stimulative effect:

> Despite the comparatively small sums realized from the federal land grants and the instances of early mismanagement, the importance of these grants to the development of state universities in the Middle West and Far West should not be underestimated. In state after state, institutions of higher learning were founded in order to take advantage of the federal grants. Often these "universities" were scarcely more than high schools, but they were the foundations on which the states were later to build strong state universities. It seems likely that without the stimulation of the federal grants many states would have had no public institution of higher education—and some no higher educational institutions at all—until many years later.[15]

THE GI BILL

This initial pattern of federal aid to higher education carried over into the post-World War II era. Although the sheer size of the postwar federal presence exerted a more significant impact on the structure, focus and conduct of education, the federal interest in higher education was still largely incidental. It massively affected educational institutions in the pursuit of essentially noneducational goals.

The *Service Man's Readjustment Act of 1944 (GI Bill)* was a prime example of this. By 1960, it

had assisted 3.5 million former servicemen in pursuing postsecondary education.[16] Yet, the primary purpose of the act was not the promotion of education per se. This was still considered to be a state responsibility, as was indicated in the failure of Congress to pursue the Zook Commission proposals (1946) for federal operating and capital expenditure grants to state universities. Rather, the aims of the act were the promotion of national economic policy and national defense. The education program helped to smooth the postwar economy's readjustment to the millions of ex-soldiers returning from the war and to repay a national debt of gratitude for their wartime service.

In matters of this kind, however, legislative objectives and their method of implementation can be closely interrelated and result in important unanticipated consequences. Certainly the educational impact of this legislation was enormous. Partly in response to the flood of new students stimulated by the *GI Bill*, additional federal programs were enacted. To help relieve overcrowded campus housing, the *Housing Act of 1950* authorized long-term loans for dormitories and housing construction. In 1955 the interest on these loans was federally subsidized, and their coverage was expanded to include construction such as dining and health care facilities and student unions. Opposition remained, however, to more direct forms of federal aid to higher education. Expansion of college construction loans to include instructional facilities failed enactment three times in the 1950s.

FEDERAL RESEARCH GRANTS TO UNIVERSITIES

Another major federal involvement in higher education stemming from World War II evolved out of the massive federal research effort. Before the war, the federal government financed about 15% of the nation's research and development (R & D) effort, mostly in agriculture but also in a few small health programs.[17] The wartime crash effort in military research raised the federal share of the country's research activities to about 80%, or $3 billion. In order to utilize the nation's existing R & D resources, much of this money was channeled to the universities.

As in other instances of federal wartime involvement in new activities, the changes wrought by the war persisted. Afterwards, the federal government continued to finance 60% of the nation's R & D, 45% above its prewar level. By 1960, the federal government was spending $750 million on research in institutions of higher education and providing two-thirds of all higher education's research money, prompting Alice Rivlin to write at the time that: "Research and development are by far the most important federally supported activities involving colleges and universities."[18]

Reflecting cold war priorities, federal research moneys in the late 1940s and 1950s were heavily concentrated in defense-related fields and technologies (as was federal spending in general). In an attempt to avoid complete military dominance in basic research, the National Science Foundation was created in 1950.[19] Over the next 2½ decades, the composition of the federal research effort continued to evolve. The military share declined in relative terms as spending on health research increased with the establishment of the National Institutes of Health, and research on space flourished in the 1960s.[20]

While scholars agree that the impact of federally funded research on colleges and universities has been significant, interpretations vary as to the precise nature of this federal impact. There are two major issues: (1) the extent of institutional dependence on the federal government, and (2) the extent to which federal research priorities have distorted the academic priorities of recipient scholars and their institutions and, consequently, have shaped the direction of institutional growth.

Theoretically, federal research grants do not entail institutional dependence on the federal government. However, significant portions of many grants are devoted to overhead costs and help support a broad range of university services. Moreover, as a large percentage of faculty and graduate students became dependent on the federal government for support—particularly in medicine and the natural sciences—postsecondary institutions themselves came to be increasingly reliant upon federal support. Lauriston King explains that:

> Although research and development support has been geared toward hard results and not educational subsidies it has in many instances come to look like aid to institutions themselves. Such support can come in the form of fattened faculty paychecks, the purchase of costly equip-

ment, or the construction of new buildings to house special research projects. Some major research universities have drawn an increasingly large share of their budget from federal funds.[21]

Similarly, Don K. Price asserts that:

> The scientific revolution has made the universities themselves financially dependent on government, and involved them deeply in the political process.[22]

The result was spelled out by former Yale President Kingman Brewster:

> I would estimate that the liberal arts and sciences institutions like Stanford, Harvard, Chicago, and Yale are at least one-third financed by the national government. This is of course heavily concentrated in medicine and the physical sciences. In the case of places like M.I.T. and Cal Tech the degree of government dependence is much higher.[23]

The effects of this dependence have been a matter of some controversy and are subject to varying interpretations. On the whole, it appears that the consequences for individual researchers have differed from those for their institutions. Don K. Price notes that initial fears that reliance on federal grants would significantly distort the work of individual scientists generally have not been realized.[24] However, Sen. Daniel P. Moynihan (D-NY) asserts that the broader effects upon institutions and the scientific disciplines have been enormous. He argues that the development of higher education in the postwar era has been shaped largely by the distribution of incentives offered by the federal government:

> The enormous expansion of chemistry, physics, biology, engineering, and their derivative fields came from the federal government; but it is absolutely essential to remember that this expansion reflected the fact that *the federal government wanted it to happen*. The universities were put to work on behalf of goals and activities deemed by government officials to be in the national interest . . . a clear case of federal domination of the directions in which higher education moved.[25]

Presumably, one consequence of this development has been that, as the direction of scientific inquiry has been altered, the balance of power and resources within institutions of higher learning has been altered with it. Moreover, the high degree of institutional dependence has had the consequence of limiting the options available to colleges and universities when they find themselves confronted with federal regulations and grant conditions they oppose. As the president of Ohio State University remarked in 1976:

> This year, one-eighth of our total budget ($43 million) will come from federal sources. . . . The fact is, we have no choice whether to be involved in major federal programs. There is no way that the president of Ohio State can say that we will not participate in federal student aid, research, or health assistance.[26]

FOOTNOTES

[1] George N. Rainsford, *Congress and Higher Education in the Nineteenth Century*, Knoxville, TN, University of Tennessee Press, 1972, p. 27. See also pp. 18–19. See also Alice Rivlin, *The Role of the Federal Government in Financing Higher Education*, Washington, DC, Brookings Institution, 1961, p. 116.

[2] Rivlin, *op. cit.*, pp. 116–117.

[3] Rainsford, *op. cit.*, pp. 36–45.

[4] *Ibid.*, pp. ix, 87. See also Rivlin, *op. cit.*, p. 10

[5] Rivlin, *op. cit.*, p. 13.

[6] Rainsford, *op. cit.*, p. 84. This section is based largely on Rainsford's account.

[7] Rainsford states that: "The constitutional issue posed the greatest threat to southerners who, by 1859, were put off by any idea contrary to the doctrine of states' rights or by any attempted federal influence on local institutions." *Ibid.*, p. 88.

[8] Quoted in *ibid.*

[9] The highly localistic Jacksonian Democrats opposed the less intrusive concept of federal land grants as well as more direct federal activities like a national university. Democratic Party platforms from 1844–56 read in part: "RESOLVED, That the federal government is one of limited powers, derived solely from the Constitution, and that grants of power shown therein ought to be strictly construed . . . and that it is inexpedient and dangerous to exercise doubtful constitutional powers. . . . [T]he proceeds of the Public Lands ought to be sacredly applied to the national objects specified in the Constitution, and that we are opposed . . . to any law for the Distribution of such proceeds among the States, as . . . repugnant to the Constitution." As quoted in Rainsford, *op. cit.*, p. 82.

[10] *Ibid.*, p. 94.

[11] *Ibid.*

[12] *Ibid.*, p. 116.

[13] As Don K. Price observes: "State and local governments and private corporations used to join in their jealousy of purely federal activities and to consider extension of them as socialistic. The federal grants to states in the field of agriculture, however, were no longer socialistic in the eyes of the Governors and the farm bloc; they were a defense of the American way of life, even though they entailed government controls." *The Scientific Estate*, New York, NY, Oxford University Press, 1968, p. 74.

[14] Although this is less true of the *Morrill Act* than of some others, Rainsford writes that "The educational significance of the Morrill legislation arose primarily because of the subsequent importance of the institutions founded. Yet . . . the educational aspects of the measure received scant attention in the Congressional debates in 1862. The passage of the act reflected concern for political strategy more than advancement of education." Rainsford, *op. cit.*, p. 95.

[15] Rivlin, *op. cit.*, p. 13.

[16] *Ibid.*, p. 61.

[17] *Ibid.*, p. 34.

[18] *Ibid.*, p. 24. In FY 1979, the federal government anticipated R & D outlays of $3.3 billion in the nation's colleges and universities. This constituted about two-thirds of higher education's research funds. "Special Analysis P," *op. cit.*, pp. 310, 313.

[19] Ibid., p. 37.

[20] "Special Analysis P," *op. cit.*, p. 329. See also chart of total federal research expenditures 1953–78: U.S. Office of Management and Budget, *Special Analyses: Budget of the United States Government: Fiscal Year 1978*, Washington, DC, U.S. Government Printing Office, 1977, p. 294.

[21] Lauriston King, *The Washington Lobbyists for Higher Education*, Lexington, MA, D.C. Heath, 1975, p. 11.

[22] Price, *op. cit.*, p. 17.

[23] Kingman Brewster, Address to Fellows of the American Bar Association, February 22, 1975, reprinted in *Congressional Record*, March 10, 1975, p. S5827. Colleges and universities differ markedly in their degree of dependence on federal funds. The Carnegie Commission on Higher Education estimated that in 1968 the top public research universities derived about 27% of their total resources from federal sources. For similar private research universities, the estimated figure was 52%. In contrast, public and private liberal arts colleges received less than 10% of their funds from federal sources (although as institutional receipts these figures may underestimate federal student assistance)—see Carnegie Commission on Higher Education, *Institutional Aid: Federal Support to Colleges and Universities*, New York, NY, McGraw-Hill, 1972, p. 40.

[24] "Most scientists once feared that if they had to depend on subsidies from federal agencies, they would be committed to work toward those agencies' purposes, and thus lose their freedom. On the contrary, it is now clear that the university scientist of reasonably high status in his field realizes that he has more freedom by virtue of his ability to seek funds from a wide variety of federal and other sources than if he were entirely dependent on the decisions of his university administration." Price, *op. cit.*, p. 181.

[25] Daniel Moynihan, *Coping*, New York, NY, Vintage, 1975, p. 302. Original emphasis.

[26] Harold Enarson, "Restoring the Partnership," remarks printed in *Congressional Record*, June 24, 1976, pp. E3594–95.

Chapter 3

Beginnings of a New Federal Role in Higher Education: The National Defense Education Act

Assessments of the modern era of direct federal involvement in higher education variously identify the *National Defense Education Act of 1958* (*NDEA*) and the *Higher Education Act of 1965* as the crucial milestones in the development of a new federal role. Although the latter stands preeminent, *NDEA* was of great importance in promoting the transition to a new foundation for federal assistance.

As indicated above, prior programs with major educational impact tended to focus on other national needs, particularly national defense. Education was largely viewed instrumentally. Moreover, the aim of federal action in most cases was to stimulate state and local interest in new areas. For the most part, *NDEA* followed this pattern in form, but it also advanced new varieties of federal assistance on behalf of a newly emerging federal interest in education itself. Under what were then considered conditions of national emergency, such narrowly conceived student aid precedents as depression era work-study grants and *GI Bill* student assistance were broadened into a more direct federal concern with education:

> The *1958 National Defense Education Act (NDEA)* was important "not so much because of the specific provisions . . . but because of the psychological breakthroughs it embodied. It asserted, more forcefully than at any time in nearly a century, a national interest in the quality

> of education that the states, communities, and private institutions provide." Although the ostensible federal interest in passing the eclectic measure was national defense, there was also some suggestion that the federal government was moving in the direction of guaranteed opportunity for higher education.[1]

Proposals for general aid to education, particularly at the elementary and secondary levels, had been the focus of extraordinary controversy in the decade prior to enactment of the *NDEA*. With the exception of those few matters with a fairly direct relationship to national defense, broad support for increased federal involvement in education was thwarted by internal divisions within the proaid coalition and firm resistance by opponents to a greater federal role. This standoff was altered dramatically, if only temporarily, in the national uproar following the Soviet orbit of Sputnik in October 1957.

The legislation that became the *NDEA* was developed almost simultaneously by both the Eisenhower Administration and the Democratic Congress.[2] Under pressures for action from both Congress and public opinion, the Administration drafted a bill in January 1958. At the same time, a bill was fashioned in the Democratic Congress by Sen. Lister Hill (D-AL) and Rep. Carl Elliot (D-AL). As Chairman of the Senate Committee on Labor and Public Welfare, Hill had been a major supporter of federal aid to education for years and was a veteran of the divisive controversies involved with it. He instructed his committee staff to develop legislation that would "steer between the Scylla of race and the Charybdis of religion." As Sundquist reports: "In accepting the title 'national defense education act,' Hill observed that his colleagues would not dare vote against both national defense and education when joined in the same bill."[3]

Both the Administration and Congressional bills combined federal assistance to higher education with aid to elementary and secondary education. In both, assistance to higher education focused on providing aid to students in the form of scholarships, the Congressional bill including education loans and work-study as well. In reaction to Sputnik and following a series of commission reports and recommendations emphasizing the shortcomings of American scientific education, both bills indicated "preference" for students in the "defense-related" areas of science, math, and modern foreign languages. Neither, however, restricted aid to such students.

With the racial and religious issues defused and cooperation established between HEW and the Congress, the two proposals were melded together in Congressional committee with little opposition. The major difficulty in passage arose in floor debate, where opposition to the scholarship provisions as a "free ride" resulted in their reduction in the Senate and elimination in the House. These provisions emerged from conference as student loans only, and the *NDEA* easily passed both Houses. It was signed by President Eisenhower on September 2, 1958, with the following higher education provisions: (1) a student loan title authorizing $295 million for direct government loans over a four-year period, with a "preference" given to students planning a teaching career or intending to pursue the study of science, math, engineering, or a modern foreign language; (2) an authorization for graduate fellowships, with preference for those planning a college teaching career; (3) funds to colleges to enhance the teaching of modern foreign languages; (4) grants to conduct research on innovative teaching aids; and (5) moneys to the NSF to promote the dissemination of scientific information.

True to the President's general reluctance to allow substantial federal involvement in supporting education, the Eisenhower Administration originally conceived of the *NDEA* as a limited and temporary measure. Certainly these characteristics eased its passage. Once passed, however, the program quickly established its permanence. Moreover, its scientific focus, which was neither consistently developed nor stringently legislated to begin with, was weakened further in subsequent changes.[4] Indeed, as suggested in Sen. Hill's comment above, many saw the Sputnik "crisis" and the bill's rationale of national security more as a pragmatic vehicle for federal aid than a careful adherence to Constitutional scruples. The bill's justification of a federal interest in education was the clearest to be uttered in years:

> The Congress hereby finds and declares that the security of the Nation requires the fullest development of the mental resources and technical skills of

its young men and women. . . . The national interest requires . . . that the federal government give assistance to education for programs which are important to our national defense.[5]

Alice Rivlin observed at the time that:

> *The National Defense Education Act* may represent the beginning of a new era of explicit recognition of higher education as a legitimate area of federal concern. To be sure, the word "defense" is in the title and there is considerable verbiage about "national security" and the "present emergency." Nevertheless, the act comes closer to being an out-and-out education measure than any previous legislation. The provision for the student loan program seems to indicate Congressional acceptance of the idea that it is in the national interest for the federal government to help undergraduates finance their education on a continuing basis. The action was not taken in order to keep students out of the labor force or to compensate them for military service, but because facilitating their education is desirable.[6]

This appraisal was reaffirmed in retrospect by Gladieux and Wolanin: "*NDEA* represented a quantum leap in the acceptable size and scope of the federal role in supplementing the states in the field of higher education."[7]

FOOTNOTES

[1] King, *op. cit.*, pp. 5–6.

[2] See James Sundquist, *Politics and Policy*, Washington, DC, Brookings Institution, 1968, pp. 174, 423. This section is based largely on Sundquist's account and on that in Congressional Quarterly, *Congress and the Nation, Volume I: 1945–1964*, Washington, DC, Congressional Quarterly Service, 1965.

[3] Sundquist, *op. cit.*, p. 176. In detailing the origins of legislation, it is, perhaps, almost never entirely accurate to characterize programs as spontaneous products of a few key individuals. In this instance, there were precedents for the legislation that were slowly grinding their way through the policy process. Both the President and Congress had previously indicated some support for scientific education, probably a small categorical program much less significant than *NDEA*. This and other questions were examined in 1956 and 1957 by the President's Committee on Education Beyond High School, but the Committee's broad proposals appeared unlikely to attract Eisenhower's approval. Together, these formed raw material that could be tapped and packaged when the circumstances allowed, but their status was very uncertain otherwise.

[4] Gladieux and Wolanin have written that: "*NDEA* was styled a temporary, emergency program, and a program specifically aimed at producing scientific manpower. However, it became in fact a permanent and broader program well before its initial four-year authorization expired." *Congress and the Colleges*, Lexington, MA, Lexington Books, 1976, p. 9.

[5] P.L. 85-864, sec. 401. The section notes, however, that: "The Congress reaffirms the principle and declares that the states and local communities have and must retain control over and primary responsibility for public education."

[6] Rivlin, *op. cit.*, p. 119.

[7] Gladieux and Wolanin, *op. cit.*, p. 9.

A Direct Federal Role Established: The Higher Education Acts of 1963 and 1965

If the *NDEA* represented a transition to a new federal role in higher education, the last 20 years have witnessed the maturation of that role based upon: (1) a pervasive and broadening fiscal and regulatory presence, and (2) a new rationale for federal intervention—promoting broader educational access and equal opportunity. Major legislative innovations, based one upon another, passed in rapid succession in 1963, 1965, and 1972. Fiscal and political barriers to a more expansive federal role were eroded and overcome. While it could be still written in 1975 that the federal role in higher education clearly remains "supplementary" to the "primacy of the states,"[1] a former university president noted in the same year that:

> We have just passed through a period in which the federal government took the major responsibility for the changes occurring in higher education; from Sputnik until the present [1975] has been a "federal" period.[2]

For the most part, the higher education titles of the *NDEA* provided aid to students, not institutions. Since the report of the Josephs Committee in 1957, however, support for institutional aid had been building as colleges came under increasing pressure from growing enrollments.[3] In response to this situation, Sen. Joseph Clark (D-PA) attempted in 1958 to fashion a higher education construction aid bill along the lines of the Hill-Burton program of hospital construction grants.[4]

When this proved unworkable, he sought to expand provisions of the *Housing Act of 1950*, which already granted loans for the construction of college housing, to include loans for instructional facilities. This proposal died in the House in 1958 and was part of the housing legislation that was twice vetoed by President Eisenhower in 1959.

Similar legislation was included in President Kennedy's omnibus education bill in 1961, but it, too, failed in the House when it became enmeshed in the religious controversy surrounding other portions of the Administration bill.[5] Offered separately in 1962, the bill nearly achieved passage, but the conference version again became caught up in the issues of race and religion as the 1962 election neared, and the bill was rejected once more.[6]

Despite this legacy of deadlock and failure, a renewed effort was made in 1963. The religious issue was more subdued that year. Antagonists on both sides of that issue, who nonetheless supported the federal aid concept in general, began to recognize the fatal consequences of failing to accommodate one another. Moreover, the religious controversy was considerably less applicable to higher education, for two reasons. First, the primary advocate for limiting aid only to public schools was the National Education Association, which represents elementary and secondary school teachers. Second, a series of precedents had been established for including private schools in programs of federal assistance to higher education, including the *GI Bill*, research funds, dormitory construction loans, and the *NDEA*. Thus, if the religious issue could be kept from spilling over from the elementary and secondary education arena, sufficient support for passage appeared to exist.

This called for a conscious strategy to maximize support and avoid controversy. Thus, in contrast to 1961, the Kennedy Administration offered a higher education package independent of elementary and secondary education. The Congress went further and separated the construction aid proposal from the other postsecondary education programs. As Sundquist observes, the categorical approach was strictly adhered to:

> . . . the tacticians had learned. *The National Defense Education Act* had shown that special purpose aid, carefully designed, could be enacted at a time when general purpose aid could not be. A special purpose approach would make it possible for the tacticians to probe, jockey, negotiate, and compromise on a wide range of separable and lesser programs, and the antagonists could move quietly away from the irreconcilable positions.[7]

Accordingly, the bill, as it passed, provided a five-year, $1.2 billion commitment of loans and grants to public and private colleges and universities for the construction of classrooms. The highly controversial scholarships were eliminated. With the active support of the education subcommittee chairmen and the new President, this proposal became one of the first major bills signed by President Johnson, leading him to refer to the 88th Congress as "the Education Congress of 1963."[8]

The *Higher Education Facilities Act* was, thus, "the first broad education bill enacted in the postwar period that did not have national defense overtones."[9] Gladieux and Wolanin note that in debate over the bill, "the national defense rationale of federal higher education policy receded . . . the goal of equal educational opportunity began to emerge."[10] A similar process affected the *NDEA*, which was reauthorized in 1961 and amended in 1963 and 1964. Its loan and graduate scholarship funds were increased, while its "defense-related" instructional focus was expanded to include areas in history, the humanities, and social science, "thus illustrating the strategy of moving toward large-scale aid through gradual expansion of special-purpose legislation."[11]

A New Rationale for Federal Involvement: The Higher Education Act of 1965

Undergraduate scholarships, work-study assistance and federal aid to libraries were all separate categorical programs recommended by President Kennedy in his 1963 omnibus education package. The Congress broke that down into separate components and passed the construction aid bill that year. Work-study assistance to students from low income families was contained in the *Equal Opportunity Act* passed in 1964. All were repackaged in the Johnson Administration proposals that became the *Higher Education Act of 1965*.[12]

This act established a new federal charter in higher education—promoting equal opportunity through aid to students. It combined this with a substantial array of separate categorical programs for a variety of other specific purposes. All told, the act consisted of eight titles authorizing a total of $840 million.

The centerpiece was a program of "Educational Opportunity Grants," available to students of "exceptional financial need" in amounts up to $800. This was the first program of scholarships to undergraduates ever enacted by the Congress. It was supplemented by the transfer of the work-study program from the Office of Economic Opportunity to the Office of Education and by a new program of subsidized loans to students from low and middle income families. The administration had recommended replacing the direct loan program of the *NDEA* with interest-subsidized loans, but Congress included both in the *Higher Education Act*.

Other titles in the act included categorical programs for grants to college libraries, matching grants to states for establishing community service programs in colleges and universities; aid to "developing institutions" (primarily black colleges in the south); Talent Search (to encourage talented students to attend college); the Teacher Corps; and an expansion of the 1963 construction grant program. Additional postsecondary categorical programs enacted in 1965 included the reauthorization and expansion of some provisions of the *NDEA*, expansion of the college housing program, and establishment of programs to further the humanities and to aid the deaf. It is no wonder that President Johnson remarked that Congress in 1965, "did more for the wonderful cause of education in America than all the previous 176 regular sessions of Congress did, put together."[13] Ten years later, knowledgeable observers agreed that:

> The basic legislative charter of higher education policy is the *Higher Education Act of 1965*. . . . The 1965 act is clearly distinguished by the breadth of the programs it initiated and by the size of the federal commitment it represents.[14]

Despite the size and scope of these legislative initiatives and the legacy of controversy from which they emerged, passage of the bill proved surprisingly easy.[15] A number of developments were responsible for this. The Democratic Congressional and Presidential landslides in the 1964 election and the political strength and skill of President Johnson served to greatly enhance the position of aid supporters. Passage of the *Civil Rights Act* and the *Elementary and Secondary Education Act* had largely settled the difficult issues of race and religion in basic education. These had often spilled over into higher education in the past, greatly complicating Congressional consideration. Moreover, these other acts largely overshadowed the *Higher Education Act*, making it relatively less controversial. Finally, the rationale of equal educational opportunity proved to be a powerful vehicle for propelling increased federal activity. It appeared to define a new and legitimate federal role in higher education, one which, furthermore, had attained widespread support in other functional areas at the time. As Gladieux and Wolanin concluded: "The logjam in higher education policy with respect to scholarships was broken by latching on to the antipoverty theme of the times."[16]

FOOTNOTES

[1] Wolanin and Gladieux, "Political Culture," *op. cit.*, p. 184.
[2] Clark Kerr, Address to the Postsecondary Education Convening Authority of the Institute for Educational Leadership (reprint), July 17, 1975, p. 6.
[3] President's Committee on Education Beyond the High School. This was established in 1956 because the 1955 White House Conference on Education involved only elementary and secondary education. Although Josephs, a life insurance executive, and most of the committee were initially predisposed against substantial federal aid, they eventually recommended a major general aid program. Eisenhower opposed this. Sundquist, *op. cit.*, pp. 195–196.
[4] *Ibid.*, p. 197.
[5] *Ibid.*, p. 203.
[6] *Ibid.*, p. 205.
[7] *Ibid.*, p. 206.
[8] *Ibid.*, p. 210.
[9] *Congressional Quarterly*, *op. cit.*, p. 1201.
[10] Gladieux and Wolanin, *Congress and the Colleges*, *op. cit.*, p. 11.
[11] Sundquist, *op. cit.*, p. 210.
[12] P. L. 89–329.
[13] Quoted in Sundquist, *op. cit.*, p. 216.
[14] Wolanin and Gladieux, "Political Culture," *op. cit.*, p. 180.
[15] Only 22 votes were cast against the bill in the House, only three in the Senate, Sundquist, *op. cit.*, p. 216.
[16] Gladieux and Wolanin, *Congress and the Colleges*, *op. cit.*, p. 12.

Equal Opportunity Preeminent: The 1972 Higher Education Amendments

With the passage of the comprehensive *Higher Education Amendments of 1972*,[1] the federal role in higher education was broadened and elaborated. Despite the unpretentious title of the act, it has been described as "the most sweeping aid to education bill ever enacted,"[2] and it established a basic charter for federal policy in higher education that continues today. Notably, it was largely a Congressional innovation, developed in reaction to proposals put forward by the Nixon Administration and the higher education interest groups.

The centerpiece of the act is a program of Basic Educational Opportunity Grants (BEOGs) which reaffirms and extends the Congressional commitment to equal educational opportunity and reemphasizes the federal focus on aid to students rather than aid to institutions. This program transformed the precedent of equal opportunity scholarships in the 1965 act into an "entitlement" program,[3] premised on the right of all qualified students to an advanced education. By greatly increasing federal spending for equal opportunity student assistance, it overshadowed the scholarship program of the 1965 act, which it redefined as "Supplemental Educational Opportunity Grants."[4] Finally, the new act placed new emphasis on educational innovation, signified by the transition from "higher education" to "postsecondary education." As Norman Birnbaum writes:

> The 1972 amendments enable us to proceed . . . toward the creation of a

> learning society.... The idea of entitlement ... formally enlarges the potential student body of institutions of learning—by breaking with the convention of ... higher education ... only for adolescents or younger adults. In principle, every citizen is now entitled to higher educational opportunity.... The amendments formalize a new category, postsecondary education, and specifically include technical and vocational education and the proprietary sector.[5]

Specifically, the BEOG program entitles any student in good standing to a basic grant of $1,800 (previously $1,400), minus the amount that a student and family can reasonably be expected to contribute. This basic grant can then be supplemented, if necessary, with additional grants, loans, and work-study funds from programs established in the 1965 act and reauthorized in 1972. The 1972 amendments also created a new program of "cost of education" allowances to colleges and universities based on the number of federally aided students at each institution and their degree of dependence on federal subsidies. This program was considered by Congress as a complement to the BEOGs, in recognition of the fact that charges to students generally cover only a portion of the cost of instruction.[6] In addition to these two major innovations, the 1972 amendments also (1) reauthorized basic categorical programs of the 1965 act, such as community services, library improvement, developing institutions, and improvement of graduate education; (2) established new programs to improve occupational education and counseling, aid community colleges, assist faltering institutions, and promote continuing education; and (3) reorganized the federal educational establishment through creation of an educational division within HEW, composed of the Office of Education and a new research-oriented National Institute of Education (NIE).

THE POLICY ENVIRONMENT

The political environment in which the 1972 act evolved was a complicated one, a fact which greatly influenced the policy development process. The higher education policy subsystem had become firmly established in the 1960s but was undergoing considerable change in the early 1970s. A new Administration with strong new policy preferences occupied the executive branch. A new chairman had assumed leadership of the Senate Labor and Public Welfare Committee; Sen. Claiborne Pell (D-RI) took pride in being an "idea man" and was suspicious of the higher education lobby, concerned about their lack of innovative policy proposals.[7] On the House Select Subcommittee on Higher Education, the small group of policy experts and entrepreneurs was in a state of flux as members changed positions and alliances within the subcommittee. The higher education interest groups were developing their organizational capacity and becoming more active. Finally, along with these new actors, a number of new approaches toward higher education policy were gaining circulation, thus creating an unusual degree of flexibility in the policy-initiation process.

The higher education interest groups orchestrated the initial dialogue for a new approach to federal policy in their field. The constituent groups had agreed among themselves to push for a program of no-strings capitation grants to colleges and universities that would provide money to each, proportionate to its enrollment. They strongly sought a change in emphasis from student aid to aid for educational institutions.

The power and institutional presence of these groups were growing in the late 1960s and early 1970s. In response to the federal program initiatives of the 1960s, they were increasing their activity and developing their organizational resources (see *Table 4*). As Lauriston King observed in his study of the higher education lobby:

> The changes that occurred in the Washington higher education community through the 1960s were rarely the product of initiatives taken by the association representatives, but were instead responses to new federal policies and to constituent pressures. At the heart of the changes were structural and organizational modifications and transactions. These included the proliferation of representatives from different parts of higher education; the creation of informal and quasi-formal structures for promoting common interests; the rise of a cadre of political specialists; and the shift in significant policymaking responsibility from association membership to more politi-

Table 4

THE DEVELOPMENT OF WASHINGTON REPRESENTATION IN HIGHER EDUCATION

Association or Office	Founded	Membership (number of institutions)	Washington Office Opened	Federal Grants Program Began
Major Associations:				
National Association of State Universities and Land-Grant Colleges	1887[a]	130	1947	1947
Association of American Colleges	1915	779	1947	1968
Association of American Universities	1900	50[b]	1962	1969
American Association of State Colleges and Universities	1961	314	1962	1967
American Association of Community and Junior Colleges	1920	875	1939	1965
American Council on Education	1918	1,399[c]	1918	1962
Special Purpose Associations:				
Association of American Medical Colleges	1876	111[d]	1965	1970
Council of Graduate Schools	1960	324	1962	1962
Council of Protestant Colleges and Universities	1958	230[e]	1960	None
Council for the Advancment of Small Colleges	1956	140	1956	None
American Association of Colleges of Teacher Education	1917	863	1959	1969
Small Associations and State Systems:				
College and University Division, National Catholic Education Association		228	1929	
State Colleges of South Dakota		6	1965	1965
University of California		9	1960	1960
State Colleges of California		19	1968	1968
Association of Jesuit Colleges and Universities[f]		28	1962	1962
Division of Educational Services of the Lutheran Council		44	1967	1967
Associated Colleges of the Midwest		12	1966	1966
East Central College Consortia		7	1968	1968
College Service Bureau		114	1969	1969

[a] Founded as the Association of State Universities and Land-Grant Colleges.
[b] Includes two Canadian institutions.
[c] Institutional members, 1974.
[d] Includes 16 Canadian institutions.
[e] Disbanded, 1970.
[f] Until 1970, Jesuit Education Association.

SOURCE: Lauriston King, *The Washington Lobbyists for Higher Education*, Lexington, MA, D.C. Heath, 1975, p. 112.

cally knowledgeable and sensitive representatives based in Washington.[8]

This enhanced organizational presence took two forms.

On the one hand, there was an efflorescence of special Washington representatives for individual schools and small groups of schools, as well as new member-servicing staffs within the established educational associations. Both of these developments were designed to help subscribers utilize federal grants and programs.[9]

On the other hand, the major higher education organizations greatly enhanced their participation in the policy process. Even before their energetic attempts to affect the 1972 act, such behavior surfaced during their participation in the struggle over the 1970 education budget.[10]

Although this growing federal orientation among higher education institutions and associations largely originated in response to the new federal programs of the Great Society, it gained additional impetus as the financial problems of higher education became increasingly serious during the late 1960s. Studies spoke in terms of *The New Depression in Higher Education.*[11] This is particularly true of the private liberal arts colleges which could not depend upon the states for assistance. Many turned to the federal government instead.

> Perhaps the most universal response [to the financial problems of colleges], however, was to look to the federal treasury for help. . . . Lingering doubts about accepting federal money for fear of government control—once a strong deterrent among many smaller, church-related institutions—had all but disappeared. "On the question of federal aid, everybody seems to be running to the same side of the boat," as one college president put it. "The only place the money can come from is the federal government—that's inevitable," said the President of Harvard.[12]

The case of these small colleges is illustrative of eroding attitudinal constraints on greater federal involvement in education with the evolution of time. Confronted with the combined forces of (1) adaptation to the federal goverment incrementally broadening role in higher education policy, and (2) severe financial difficulties that often threatened institutional survival itself, many private colleges abandoned their opposition to a greater federal role and actively sought assistance.

> The transformation in the AAC's [Association of American Colleges] tone and posture toward political action is an impressive indication of the more general trend toward abandoning the aloof, almost condescending attitude toward politics that had pervaded much of higher education in earlier years. The change in the AAC is particularly significant for its member colleges were a major force in reiterating warnings about the perils of federal intervention as a consequence of federal aid. Pressing financial problems worked rapidly to erode this long and cherished ideological heritage.[13]

THE POLICY PROCESS

The massive program[14] of institutional aid that was sought by the education lobby was rejected by the Congress and Administration alike, however. Most governmental decisionmakers, even among the educational specialists on the Congressional committees, generally favored a continued reliance on the student aid approach for reasons of both educational policy and intergovernmental integrity. Many were influenced by educational and economic analysts who suggested that more emphasis should be placed on the educational marketplace, fortified by federal student assistance. This approach would rely on student preferences to determine which institutions received governmental aid.

Direct aid to institutions, on the other hand, was thought to simply underwrite and reinforce existing institutional practices. Although helping to maintain postsecondary institutions generally, it demonstrated little regard for the primary national objectives identified in the past, and it violated the surviving consensus on the intergovernmental allocation of functions. By and large, national policymakers remained supportive of a secondary federal role in higher education—including federal stimulus of certain national objectives, but with major responsibility for institutional support residing in the states:

> . . . a frequently voiced argument against enrollment-based institutional aid was that it seemed to imply that the federal government would assume a major share of the basic support of higher education, a responsibility traditionally left to the states.[15]

In 1971, the Nixon Administration submitted to Congress a proposal requiring that aid to students be more strictly targeted on the basis of need, though it limited total aid even to these students to $1,400 per year. In addition, more emphasis was placed on loans than on grants, and higher education categoricals were to be consolidated into a National Foundation for Higher Education.

This proposal was roundly criticized in Congress from all sides—for its limited budget, its heavy reliance on loans, and its inattention to the needs of hardpressed schools and middle-class students. Rep. John Brademas (D-IN), for example, characterized the bill as one written by the then Budget Bureau,[16] which was known for its penurious behavior. In general, there was simply a great deal of distrust and suspicion of the Administration. This was exacerbated by the circumstances under which the proposal was developed—largely in the White House itself, with considerable secrecy and relatively little outside input. There was also much feeling among Congressional specialists that abstract policy concepts had been too hastily and clumsily applied.[17] As a result, the bill received little support from either side of the aisle in Congress.

The Administration's legislative failure and its aloof stance left to Congress the task of structuring a consensus. In the Senate, this task was largely assumed by Labor and Public Welfare Committee Chairman Claiborne Pell and his staff. Sen. Pell advanced a proposal reflecting his strong conviction that higher education should be available to all as a matter of right. This concept took shape legislatively in the form of a new program of Basic Educational Opportunity Grants, which combined elements of the Administration approach with other ideas in a much larger program. These grants were to be available in amounts up to $1,200, depending on family income, and could be supplemented with existing loan programs.

Sen. Pell and others had become disenchanted with the higher education lobby, viewing its constitutional aid proposal as unimaginative and self-serving.[18] However, a cost of education allowance was attached to the basic grants in order to cover costs of instruction, beyond basic tuition fees, incurred by schools. So composed, the proposal passed the Senate easily. Committee members had reached a "gentlemanly agreement" on the bill, combining their ties to specific categorical programs folded into it with more generalized support of the basic concept.[19]

While the Senate completed action on its bill, leading members of the House Special Subcommittee on Education remained divided in their approach. The Subcommittee Chair, Rep. Edith Green (D-OR), strongly supported a program of institutional grants. Having become convinced of the serious financial problems facing higher education, she allied herself with the education lobby.

Two ranking Republican members, Reps. Albert Quie (R-MN) and John Dellenback (R-OR), were also originally attracted to this position, due to its no-strings aid approach and its promised relief for threatened private colleges. However, along with the Administration, they eventually came to support provisions similar to those in the Senate bill, with targeting on need plus cost of education allowances to aid private colleges. An important consideration in this decision was a developing fear that institutional aid would become a politically uncontrollable spending program:

> . . . Quie felt that enrollment-based institutional aid could easily become an expensive and inflexible commitment by the federal government. The analogy that he and his staff frequently applied was the impact aid program, which made grants to local school districts based on their enrollments of elementary and secondary school students from families employed by the federal government. A generation of Republican and Democratic administrations had struggled unsuccessfully to repeal or amend impact aid and distribute the large number of dollars it represented in some more rational way. Capitation grants, Quie feared, would be as immovable and irrational as impact aid.[20]

The basic differences in approach which had emerged in the House Special Subcommittee on Education were never fully resolved during the

course of House deliberation and passage of a postsecondary education bill. A rather unusual alliance on behalf of the student aid-cost of instruction approach gradually developed between Reps. Quie and Brademas. However, the final House bill largely reflected Rep. Green's preference for general institutional aid.

Most Committee members were not firmly committed to this approach. As in the Senate, however, inclusion of members' priority projects in the final legislation gave them "personal stakes" in the bill sufficient to allow passage. For example, Brademas' concept of the National Institute of Education to perform evaluation and research was added to the bill. Similarly, Rep. Roman Pucinski (D-IL) obtained inclusion of occupational education and ethnic studies programs.[21]

This outcome was altered during the House-Senate conference. The combination of a divided House delegation and a united Senate delegation resulted in resolution of the student aid-institutional aid question along the lines of the Senate approach. As is commonly the case in Congressional deliberations, personal factors entered importantly into the decisionmaking process as well. Chairman Carl Perkins (D-KY) of the House Education and Labor Committee, firmly joined the Quie-Brademas alliance after Mrs. Green charged from the House floor that House conferees were selling out to the Senate. Personal antagonisms may thus have helped undermine support for institutional aid.

As reported from conference and finally passed, the *1972 Education Amendments* reflected the basic thrust of the Senate position, combining need-oriented student aid with cost of instruction allowances. Through a difficult and fragile exercise of Congressional restraint, a more conventional federal aid approach was retained. Gladieux and Wolanin summarize the outcome as follows:

> The 1972 act reaffirms the traditional boundary between federal and state roles in the support of higher education. The basic responsibility resides with the states while the federal government provides funds to fill specified national needs. Thus Congress pulled up short of a plan that amounted to federal revenue sharing with institutions of higher education—across-the-board general operating support distributed on the basis of enrollments. It was unwilling to underwrite the entire system without reference to any national objective other than preserving and strengthening educational institutions. Instead, Congress decided on a program that would help institutions only in such a way as to advance the purpose identified above as the hallmark of the act, equal opportunity for higher education. The responsibility for general support of institutions, it was decided, should continue to rest with the states.[22]

FOOTNOTES

[1] P.L. 92-318.

[2] Congressional Quarterly, *Congress and the Nation, Volume III, 1969–72*, Washington, DC, Congressional Quarterly, 1973, p. 582.

[3] Although founded on the concept of entitlement to higher education, the program is not a "true" entitlement because its overall funding is subject to the normal process of Congressional appropriations. Thus, if qualified demand exceeds moneys appropriated, grants may be adjusted downward. The rapid growth of the program, however, suggests a reluctance to deny expectations so created.

[4] 1977 outlays for BEOGs totaled $1.387 billion, compared with supplementary and work-study grants combined of $620 million. Outlays for BEOGs in 1979 are estimated to be $1.936 billion (not including proposed additions in lieu of tuition tax credits) vs. $762 million for the 1965 programs.

[5] Norman Birnbaum, "Higher Education and the Federal Government," *Educational Record* 57, Fall 1976, p. 227.

[6] This program, while authorized, has not been funded.

[7] Gladieux and Wolanin, *Congress and the Colleges*, *op. cit.*, pp. 89, 111.

[8] King, *op. cit.*, p. 110.

[9] As King describes it: "In a word, the basic service the higher education representatives provide for members is aid in grantsmanship, the increasingly organized and systematic effort to reap the harvest of federal policies directed toward higher education." *Ibid.*, p. 46.

[10] One report described this unusual 1970 effort as follows: "The council's strategy is to 'talk to key people on committees' about legislation in which there is ACE interest. If there is something of interest to the council happening in a committee, Wilson said, he often will 'get on the telephone' to college presidents in the states of key committee members and get them to call their respective Senators or Representatives. . . . College presidents 'don't need as much prompting' to contact the federal government as they did a few years ago, Wilson said. 'Since the federal government has now become their prime source of funds, they've much more savvy than they used to have.' " Lucille Eddinger, "Washington Pressures/American Council on Education," *National Journal*, April 25, 1970, pp. 887–888.

[11] Earl Cheit, *The New Depression in Higher Education*, New York, NY, McGraw-Hill, 1971.
[12] Gladieux and Wolanin, *Congress and Colleges*, *op. cit.*, p. 22.
[13] King, *op. cit.*, p. 89.
[14] Gladieux and Wolanin, *Congress and the Colleges*, *op. cit.*, p. 37. This section is based largely on their account.
[15] *Ibid.*, p. 260.
[16] *Ibid.*, p. 121.
[17] *Ibid.*, p. 74..
[18] *Ibid.*, p. 111.
[19] *Ibid.*, p. 110.
[20] *Ibid.*, p. 137.
[21] *Ibid.*, pp. 141, 147.
[22] *Ibid.*, pp. 225–226.

Chapter 6

A Growing Regulatory Presence

Since the passage of the 1972 act, the focus of policy debate in higher education has largely shifted from finance to regulation. Reauthorization of higher education legislation in 1976 and in 1980 consisted mainly of extensions and refinements of the basic structure of higher education aid established in the *Education Amendments of 1972*. While major new initiatives, like tuition tax credits, and radical changes in the existing loan system have been proposed, none has passed the Congress to date.[1]

On the other hand, concern over a variety of federal regulations and grant conditions has increasingly become the subject of speeches, articles, editorials, and reports. The programs and problems involved are many and varied. They range from environmental and safety laws affecting broad sectors of the economy to grant conditions aimed specifically at higher education. Complaints range from increasing red tape and the administrative costs of regulatory compliance to the distortion of academic priorities and erosion of academic freedom. Before examining these issues in detail, however, it is useful first to gain some historical perspective on federal regulations and higher education.

EVOLUTION OF FEDERAL REGULATION

As previously mentioned, the earliest land grants for higher education entailed practically no

federal regulations or prescriptions whatsoever. To a considerable extent, they were maladministered and misspent. The *Morrill Act* originated what became an evolutionary trend in federal conditions on grants-in-aid. Its provisions limited spending only to specific purposes and required submission of annual reports on expenditures. Although poorly implemented and enforced, these principles established important precedents which survived challenge on the House floor in 1864. Rainsford explains that:

> During the debate on the 1864 amendment, Congressman William Holman of Indiana proposed an additional amendment whereby the states would individually determine whether they would apply the funds to education in agriculture and mechanical arts or to some other such purposes as their respective legislatures might designate. . . . The thrust of his amendment was to establish local control of the endowment fund for any purpose. Morrill responded with the comment: "As I understand it, the object of the original donation was to enable the industrial classes of the country to obtain a cheap, solid, and substantial education. I trust the House will not begin this early to fritter away the whole purpose of that act." Congressman Thaddeus Stevens of Pennsylvania supported Morrill in emphasizing the national character of his act. As he said, "When the original bill was framed it was intended to be national and to establish a national system of education, bestowing national property for that purpose."[2]

Another exception to the general absence of federal conditions on the use of early grants was a civil rights provision attached to the second *Morrill Act of 1890*. According to this provision, state college systems that discriminated against black students were ineligible for federal land-grant college funds unless separate and "equitable" facilities were provided. Rainsford underscores the importance of this early regulation, writing:

> In many ways the most striking feature of the *Morrill-McComas Act* was the guarantee that Negroes would benefit from its provisions. . . . Section 1 of the 1890 act provided that no money would be paid to a state or territory "where a distinction of race or color is made in the admission of students." Separate facilities, however, between which the funds were "equitably divided" would satisfy this provision. . . . On the basis of population, the Negro has not received a proportionate share of these federal grants. . . . The funds appropriated under the 1890 act have, however, provided a significant portion of the money spent on Negro education in the south through the 1930s.[3]

The great bulk of early difficulties concerning governmental controls and higher education, however, involved neither the federal government nor grants-in-aid. The states have much more power in this area and have been more active, intruding on occasion even into matters of staffing and curriculum. Such acts by the federal government have necessarily been few. Abuses during the McCarthy era and the attempt to use federal aid cutoffs to halt student protests against the Vietnam War perhaps qualify as similarly intrusive federal interventions.

The pattern of federal regulation has been far more mundane than these overtly political threats to the independence of higher education. In fact, existing major programs continue to exclude open federal interference in curriculum and staffing.[4] As with federal spending programs, regulatory involvement began cautiously.

The immediate postwar programs of federal involvement in higher education—research and the *GI Bill*—have generally not been a major source of conflict over regulatory intrusion. Until recently, at least, colleges and universities have been relatively satisfied in their relationship with the Veterans Administration.[5] In research, early steps were taken to protect the autonomy of educational institutions and disciplines from direct federal interference through the use of semiautonomous scientific panels for distributing research grants. While panels have been criticized for narrowness and the research priorities flowing from federal grants, more direct interference has not been a serious problem. This may change as research restrictions multiply (recent regulations range from the experimental use of human sub-

jects to recombinant DNA research); but, up to this point, the main problem with research funds has been the resultant degree of dependence on the federal government. This makes recipient institutions vulnerable to the later application of across-the-board regulations, like affirmative action, which apply to a wide range of federal funds.

In the 1960s, the issue of federal intrusion became less ideological but more real. At that time, the major federal regulatory involvement was on behalf of civil rights, as the federal government challenged the segregated state college systems in the south. Because many states had so abused their independence, strong federal actions were accorded legitimacy.

While less salient then, other regulatory issues were also beginning to develop. As the number and complexity of programs proliferated, administrative costs and burdens on educational institutions grew also. Moreover, the shift in student aid to emphasize equal opportunity placed increasing limits on institutional flexibility in this area. Summing up these problems, one report at the time complained that federal programs entailed "distortion of academic development, disruption of institutional integrity, and the imposition of burdensome, sometimes inconsistent, administrative regulations."[6] Nonetheless, these concerns were overshadowed by higher education's thirst for additional federal funds. Even the private colleges, the group most wary of federal controls, halted their organized opposition to federal assistance and joined the quest for more money.[7]

REGULATION: MAJOR ISSUE OF THE 70s

In contrast, by the 1970s, federal regulation of higher education had become as, or more important than the question of more federal funding. Gladieux and Wolanin observe that:

> Institutions of higher education are no longer looking to Washington for salvation as they may have been five years ago. Many of them are more concerned today about *protection* from potential harm at the hands of government.[8] (authors' emphasis)

Several developments contributed to this situation. First, in the 1960s and early 1970s there was a greater Congressional willingness to intervene in educational policy. Gladieux and Wolanin emphasize this aspect of the 1972 *Education Amendments*, stating:

> . . . [T]his act also indicate[d] the direction of change . . . [including] a broadening of the scope of permissible federal action that is not seen to compromise the role of the states or to constitute "undue" federal interference or control. . .[T]he act places a special stress on accountability of institutions of higher education for their stewardship of federal higher education programs. In addition, the theme of innovation and reform in higher education is quite notable. Underlying the 1972 act seems to be the perception that much of what is being provided by higher education is ineffective, uninteresting, and hidebound.[9]

Reflecting this emphasis on innovation are:

- the increased reliance placed on student aid—allowing students to "vote with their feet;"
- promotion of "postsecondary education" to "encourage and in some ways mandate a broadening of the educational mainstream to include types of students and institutions that have generally been excluded or given second-class status in the past;"[10] and
- the authorization of the Fund for the Improvement of Postsecondary Education.

A second factor contributing to regulatory problems in the 1970s was the accumulation of new regulations that apply to broad sectors of social action, several of which are commonly referred to as the "new social regulation." In contrast to the bulk of business-oriented regulations in the past, these apply equally to institutions of higher learning. Included in this category are:

- Equal Pay—*Equal Pay Act of 1963*.
- Equal Employment Opportunity—Title VII of the *Civil Rights Act of 1964*, as amended.
- Affirmative Action—Executive Order 11246, issued in 1965, as amended by Executive Order 11375 to include discrimination on basis of sex, 1967.
- Age Discrimination—*Employment Act of 1967*, as amended.

- Wage and Hour Standards—*Fair Labor Standards Act of 1938*, as amended (FLSA).
- Unemployment Compensation—*Social Security Act, Employment Security Amendments*, 1970.
- Social Security Tax Increases—*Social Security Act, Employment Security Amendments*, 1970.
- Health Maintenance Organizations (HMOs)—*Health Maintenance Organization Act of 1973*.
- Occupational Safety and Health—*Occupational Safety and Health Act of 1970*.
- Environmental Protection—Environmental Protection Agency regulations to implement several laws.
- Access to the Handicapped—Section 504 of the *Rehabilitation Act of 1973*.[11]

According to *Change* magazine, the costs to institutions of such federally mandated requirements, "have increased ten-to-twentyfold in the last decade, rising much faster than total revenues"[12] (see *Graph 3*).

Finally, in addition to such across-the-board regulations, a series of new regulations and grant conditions have been passed which specifically affect higher education. These include the *Family Educational Rights and Privacy Act (Buckley Amendment)*, dealing with access and distribution of student records, and Title IX of the 1972 *Education Amendments*, prohibiting sex discrimination. While intended to correct genuine abuses or to promote social change, such provisions have also created some difficult administrative problems, which have been exacerbated by institutional dependence on the grants used to enforce these conditions.

The result has been a massive outcry against federal regulations affecting higher education. As the President of Ohio State observed: "A fundamental change is taking place in the relationship between Washington and the nation's colleges and universities. . . . the reality is undeniable; the federal presence is everywhere in the university."[13] Four problems in particular have received attention.

1. Federal regulations challenge academic freedom and the merit system. Affirmative action provisions have been particularly criticized in this regard. For example, Richard Lester asserts in "The Equal Pay Boondoggle" that:

> The extension of the *Equal Pay Act* to executives and professionals has created perplexing and disturbing problems, especially for university faculty. . . . Some of the Wage and Hour staff [of the U.S. Department of Labor] are trying to force universities to alter their merit systems to conform closely to the industrial and civil service models. . . . Such a system would . . . eliminate any reward for individual differences in quality of teaching, quality of research, or quality of other contributions to achievement of the institution's mission.[14]

Another affirmative action provision that has been singled out for its intrusive effects on higher education is Executive Order 11246 (amended by E.O. 11375 to prohibit sex discrimination). This requires that all federal contractees agree not to discriminate in employment and that they take "affirmative action" to assure this.[15] A balanced and comprehensive study on the effects of federal regulations at George Washington University concluded that:

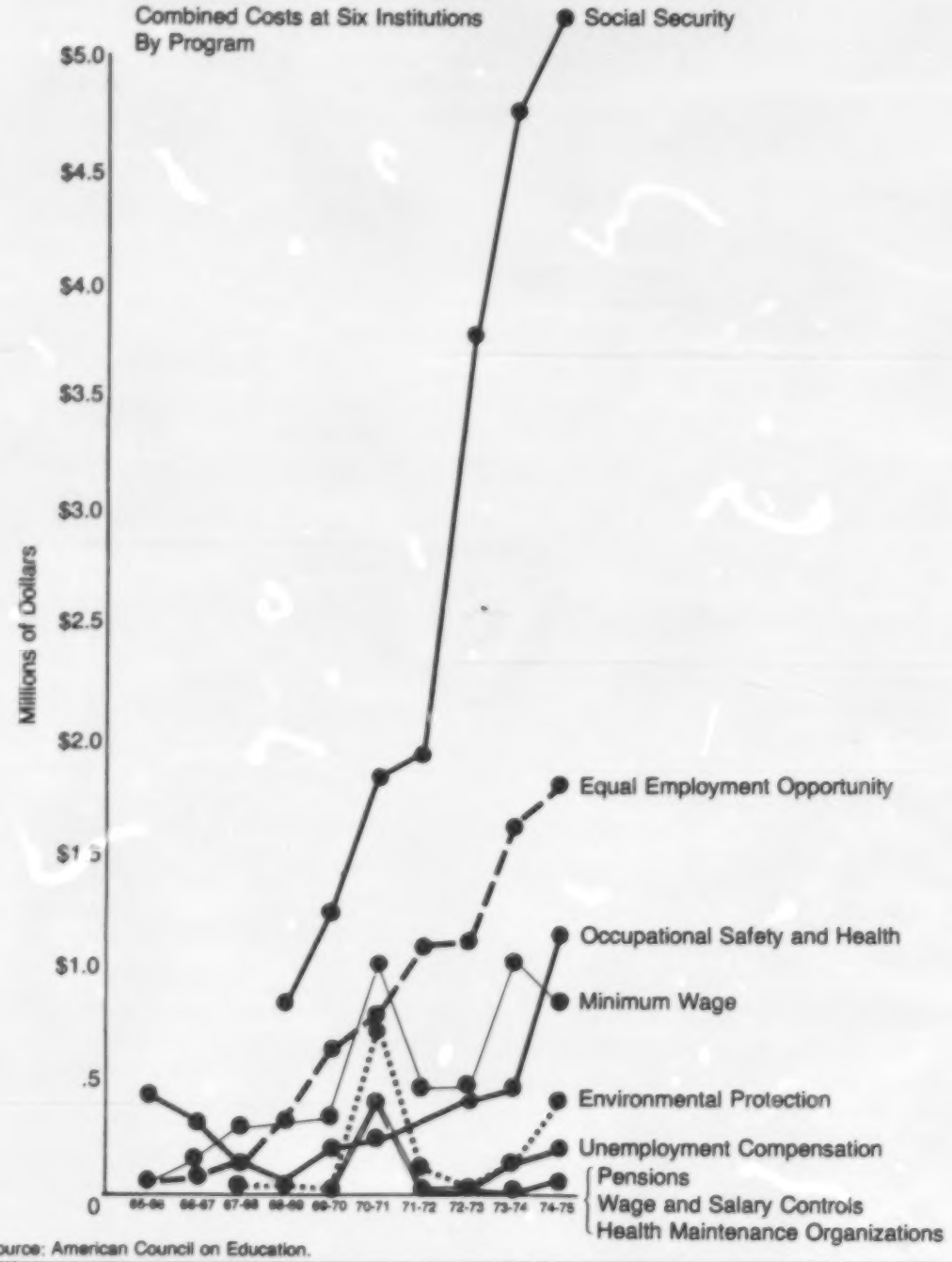
> Of all the laws and regulations affecting the university, Executive Order 11246 has had the greatest and broadest effect, in part because of the complexity and scope of the order itself. The order requires collection of data on all employees, utilization analysis, projection of goals and timetables for hiring members of minority groups and women, and the development of systems to monitor hiring procedures and practices. No other regulation requires the development of such an extensive management system and such extensive modification of policies and procedures. . . . [I]t is clear that hiring procedures and practices have changed. Employment openings are published in appropriate ways, and some departments are making special efforts to include qualified women and members of minority groups in their applicant pool.[16]

In hyperbolic terms, the President of Rockford College complained that:

> Government has imposed a policy which says that academic competence

Graph 3

TRENDS IN COSTS OF IMPLEMENTING FEDERALLY MANDATED SOCIAL PROGRAMS: 1965–75



Source: American Council on Education.

> shall no longer be the supreme determining factor in faculty appointments. Academic freedom is now a thing of the past, and federal subsidy has been the bludgeon employed to demolish it.[17]

2. Federal programs and regulations are costly to administer. The study by the ACE indicates that the costs of compliance with federally mandated programs range from 1% to 4% of the total operating budgets of higher education institutions.[18] *Change* magazine estimated in 1975 that "This year's total cost to higher education institutions of federally mandated programs alone is . . . $2 billion—or the equivalent of the total of all voluntary givings to institutions of higher education."[19]

The programs identified by various sources as most expensive have been social security, affirmative action programs, OSHA, environmental requirements, and the *Rehabilitation Act of 1973* (access to the handicapped). While compliance costs from these programs vary widely, ranging from architectural modifications to data collection and reporting, the ACE report concludes that "The residual effects of implementing federal social, manpower, science and tax policies have a greater financial impact on higher education than do coherent federal education policies."[20]

3. Federal programs distort academic priorities. This has long been a concern with regard to federally funded research. It now denotes a broader concern that, given the scarcity of educational resources, compliance with new regulations diverts precious educational funds from academic to administrative uses. Ohio State President Harold Enarson charged that:

> The burden of intense regulation also forces the university to bear a second kind of cost—debilitation. . . . These exercises in compliance . . . reverberate throughout the organization, consuming our time and energy and diverting us from other tasks.[21]

Likewise, Harold Soloman reports in the George Washington Study that "if the costs of compliance continue to increase, academic quality will certainly have to suffer sometime in the future."[22]

4. Subjecting an entire institution to grant conditions attached to a single program is improper. Former Yale President Kingman Brewster has spoken out against this practice at length. In an address to the Fellows of the American Bar Foundation, he said:

> I do object to the notion that the receipt of a federal dollar for some purposes subjects a private institution to federal regulation and surveillance in all its activities. . . . Thus if we are to receive support for physics, let's say, we must conform to federal policies in the admission of women to the art school, in women's athletics facilities, and in the recruitment of women and minorities, not just in the federally supported field, but throughout the university. . . . It is not sufficient to say that since the government is paying the bills, therefore it has a right to specify the product. This would be understandable if all that is being offered were special support for the program of special federal interest. To say, however, that support for all general educational activities of national importance will be withheld unless a school enlarges the program the government is particularly interested in, is to use the threat of cutting off aid for one purpose in order to accomplish another. . . . This is constitutionally objectionable, even in the name of a good cause such as "affirmative action."[23]

Given the traditionally decentralized structure of higher education, this is viewed as particularly objectionable, especially since the federal role differs greatly among the component units.[24]

This practice has become even more attenuated with the growing reliance on student assistance. For example, Title IX antisex discrimination regulations issued in 1975 included as "recipient institutions" schools whose only federal aid consisted of students getting federal assistance. The president of one such college objected that this was "as if the government were to nationalize a supermarket because someone had bought groceries there with a Social Security check."[25]

While these critiques of the federal role have received considerable attention, there is less than total agreement within the higher education community of the true extent of the regulatory problem. To begin with, the goals of these regulations

are generally recognized as worthy, and many have been directed at genuine problems in the field. The existence of a segregated educational system in the south, for instance, clearly warranted extensive federal intervention in that case. Similarly, while redress can be expensive, it is not clear that colleges and universities should be granted favored treatment if they violate pollution and safety regulations.

The use of affirmative action regulations has also been defended. One author maintains that even the data of regulatory critics establishes the existence of "a pattern of discrimination" in the hiring of women in higher education. She notes that, "comparing 1968–69 to 1972–73 ... data ... show a decline in the percentage of female faculty in four-year and two-year colleges," although, "the increase in female PhDs would warrant increased hiring at least at the beginning level."[26] She concludes that "The five-year history of affirmative action in American universities can only be characterized as a wholesale retreat."[27]

There is considerable recognition that the failings of higher education have at least contributed to increased federal regulation. For example, Stephen K. Bailey has argued:

> The surest way to guarantee a continuation and extension of the kinds of government regulation we do not like is ... to pretend that we are free from sin and that in any case government has no right to invade our bastions of sacred immunity even when we are unjust. Furthermore, if we are foolhardy enough to assume that higher education has more troops than the government in any direct confrontation, that we need not be sensitive to emerging norms of social justice, or need not attempt to put our own houses in order, then we will get what we deserve. The government will ultimately run us over, to the sound of applause from public bystanders.[28]

And the former head of the ACE argues that higher education needs:

> ... a basic commitment [to self regulation]. ... We cannot limit or reduce the scope of governmental intervention unless we have developed regulatory processes within our institutions and among institutions to which we are willing to ascribe authority to monitor institutional policy and practices.[29]

In addition to these reflections on the justification for regulation, there has also been some reevaluation of their total effect. Some observers suggest that there has been a tendency to exaggerate the claims of regulatory difficulties through hyperbole and rhetorical flourish. For example, while original estimates of the cost of making college facilities accessible to disabled students ranged from $3 billion to $8 billion, higher education administrators now admit that these figures may have been greatly exaggerated, in part because of misunderstandings of federal requirements.[30] Charles Saunders, director of the ACE's Office of Governmental Relations, speaking of the literature on federal regulation in general, warned that it:

> ... represents anecdotal, undocumented complaints about the evils of government interference and lacks disciplined examination of the federal role on the individual campus. Initially the rhetoric may have helped call attention to the problem, but now ... [t]he need is for accurate diagnosis.[31]

Finally, careful studies of the regulatory issue have illustrated the positive impact of regulations as well. The study of regulatory effects at George Washington University observed that:

> Questionnaires completed by academic department chairmen showed that some believed open advertisement had resulted in better qualified applicants than the department had previously attracted. ... At least three other areas have benefited: (1) Salaries of men and women faculty members were equalized in 1973. Annual reviews are conducted to ensure that discrimination in salaries does not recur. (2) In response to Title IX, the university has provided for a strong intercollegiate athletic program for women. (3) A beginning has been made in making physical facilities accessible to the handicapped. Although not demonstrable, perhaps most important of all is the assessment that, despite good intentions, many changes required by federal law

would not have occurred without the law.[32]

The Politics of Regulation

This high degree of controversy over the federal regulatory role necessarily raises questions about the enactment of these regulatory policies. Were they developed deliberately or haphazardly, openly or obscurely, bureacratically, congressionally or through group demands? Although the legislative history of many regulations is sketchy, some studies, particularly on the regulation of sex discrimination on higher education, are available.[33] Thus, elements of the politics of regulation can be pieced together.

Across-the-Board Regulations

The ACE argues forcefully that across-the-board regulations cause increasingly serious administrative and fiscal problems for institutions of higher learning.[34] Yet, under the best of circumstances, it would prove difficult to anticipate and resolve such problems. By their very nature, such regulations affect broad areas of activity indiscriminately. This broad scope precludes detailed consideration of a regulation's impact on specific areas like higher education, even though it may be sufficiently distinct to warrant it. The effect upon higher education is only incidental to the general regulatory aims involved. Accordingly, the political debate on such regulations is likely to occur on a similarly general plane. It can be expected that legislative consideration will focus on the universal effects of such regulation.

These inherent problems are exacerbated, however, by the frequent absence of careful consideration given even the general effects of across-the-board regulations. When they are proposed, Congress often seems to react to such regulations as moral issues of opportunities for position-taking, rather than as specific legislative enactments with important operational ramifications. This manner of policymaking certainly characterized several environmental enactments.[35] It seems also to have occurred with rehabilitation regulations. A recent ACIR report found that "The provision prohibiting discrimination against the handicapped in federally assisted programs ... was subjected to no public hearings and few floor debates of any substance prior to its incorporation into the *Rehabilitation Services Act of 1973*."[36] Reviewing several other such programs, the report concludes that there is a "failure of Congress to consider the full consequence of general national policy conditions."[37]

A similar shortcoming appears evident in the adoption by Congress of other grant conditions. In the case of sex discrimination, Jo Freeman writes that:

> [Representative Bella Abzug (D-NY)] makes it a policy to carry in her floor file a standard antisex-discrimination amendment which she introduces into every bill she can. Abzug has encouraged others to do so in their committees, and the condition of similar provisions to the *Revenue Sharing, Health Manpower,* and *Nurses Training Acts* was largely due to this semiautomatic response.[38]

Likewise, a study of the *Age Discrimination Act of 1975* concluded:

> By and large, members of both Houses proceeded with the consideration of ADA in haste, causing the bill's poor craftsmanship.... As Sen. Thomas Eagleton (D-MO) and others interpret the legislative history, "not only was there no record showing discrimination originally, ... problems of age discrimination ... should not have been addressed in such a broad swipe."[39]

Clearly, such "semiautomatic" procedures are not conducive to the careful examination on a regulation's consequences for the specific program involved, even if the provision should prove to be warranted.

Direct Regulation

In addition to across-the-board regulations, several grant conditions have been developed in recent years which apply specifically to higher education. One example of this was the application to higher education of Executive Order 11246, which prohibits racial and sexual discrimination in employment among recipients of federal grants and contracts. More recent cases include Title IX of the *Education Amendments of 1972*, concerning the elimination of sexually discrimatory practices in educational admissions, facilities and

practices; and the *Family Educational Rights and Privacy Act* (FERPA), dealing with procedures of educational records keeping.

The roots of E.O. 11247 extend back to the enactment of the *Civil Rights Act of 1964*. Gender was added fortuitously to the antijob discrimination provisions in Title VII of this act. During debate on the House floor, southern opponents of the legislation sponsored an amendment to prohibit sex discrimination which was described by civil rights proponents "as a ploy," part of an attempt to "load up the bill with objectionable features that might split the coalition supporting it."[40] The amendment was opposed by civil rights groups, the Labor Department's Women's Bureau, the American Association of University Women, and by many Congressional liberals including Rep. Edith Green. However, enough liberals favoring the amendment joined with conservatives to win its adoption, and it survived through final passage due to a "combination of historical accident and coattail riding."[41]

Despite its enactment, there was no immediate response to Title VII's sex discrimination provision. The Equal Employment Opportunity Commission (EEOC), charged with enforcing the section, did not take it seriously. The commission focused its limited resources on combatting racial discrimination, while its executive director labeled the sex provision a "fluke," "conceived out of wedlock."[42] However, Prof. Freeman identifies Title VII as a major factor leading to the creation in 1966 of the National Organization for Women (NOW), which organized to seek enforcement of the act:

> While sex in Title VII was not at the time treated seriously, its existence prompted many latent feminists to create a pressure group to demand its adequate enforcement. This pressure group, NOW, helped stimulate a growing movement which in turn prompted more legislation, in a rapidly accelerating cycle.[43]

NOW's first action was to urge President Johnson to add sex discrimination to E.O. 11246,[44] the executive branch complement to Title VII. E.O. 11246 requires that all federal contractees agree not to discriminate in employment practices and that they take affirmative action to address prior discrimination. After additional support for the idea was generated by Assistant Secretary of Labor Esther Peterson and others, the Citizens' Advisory Council on the Status of Women (CACSW) was directed to draft a new order which included sex discrimination.[45] That order, E.O. 11375, encountered no opposition and was signed by the President on October 13, 1967.[46] Freeman concludes that "this relatively easy success was largely due to the precedent of Title VII. . . . All E.O. 11375 did was bring the policies of the executive branch of government into conformity with those of Congress."[47]

The first actual use of the executive order involved higher education and occurred in 1969. Bernice Sandler, a part-time teacher at the University of Maryland and a ranking member of the Women's Equity Action League (WEAL), initiated a discrimination complaint against the university. While seeking legal recourse, she had found that neither the *Equal Pay Act of 1962* nor Title VII applied to her case. Through "an accident of circumstances," Sandler found that E.O. 11246 did apply because it covered all federal grant recipients.[48] Moreover, it allowed her to file a class action complaint based on an alleged institutional pattern of discrimination. General employment statistics, rather than detailed documentation of her own case, could be used to support such a case. If successful, the Labor Department could request a governmental investigation of the university's whole employment practice. Freeman reports that "An OFCC [Office of Federal Contract Compliance] official suggested an appropriate strategy and helped draft the initial complaint."[49]

The complainant's strategy reflected delayed enforcement of E.O. 11375. The Department of Labor (DOL) had not yet issued necessary sex discrimination guidelines to federal contractors. HEW had not investigated employment practices in higher education. After filing the complaint, Sandler and WEAL began an effort to gain enforcement. They met with campus groups, promoting constituent letters to Congress. They sent information on sex discrimination in higher education to members of the Congressional education committees. Sandler wrote a speech on the subject for Michigan's Rep. Martha Griffiths (who was also on the WEAL board) that was printed in the *Congressional Record*.

Congressional interest prompted DOL to issue guidelines pursuant to E.O. 11375. HEW's Contract Compliance Office began to investigate sex discrimination in higher education and found

major discrepancies in the wages paid to, and promotions given men and women. This led to the creation in 1972 of a special higher education division in the office to investigate further complaints and to take action against them.

Title IX

Title IX of the *Education Amendments of 1972* probibits sex discrimination in the admissions, facilities, and practices of educational institutions which receive federal funds. Despite its importance, it did not represent a majority consensus of Congress on the problem. Rather, it was the product of somewhat curious mix of circumstances.

Title IX evolved in an environment of increasing concern over the problem of sex discrimination in higher education.[50] WEAL's class action suit complained of widespread violations of E.O. 11246 and alleged the existence of a pattern of sex discrimination in employment. A June 1970, report of the President's Task Force on Women's Rights and Responsibilities supported this conclusion and provided considerable evidence to this effect. It recommended that a number of steps be taken to address the situation, such as ending the exemptions of professional workers under the *Equal Pay Act* and of teachers from Title VII of the *Civil Rights Act*. (Both of these were accomplished in 1972.)

In response to these charges, Rep. Green introduced a bill to end sex discrimination in *all* federally assisted programs. Hearings on the bill were held in 1971. Witnesses were major women's groups, who testified on the problems in higher education.[51] Higher education groups did not appear.

While no further action was taken on that bill, the hearings had convinced Rep. Green that a sex discrimination problem existed in higher education. The next year she modified her proposal to apply only to recipients of educational grants and included it in her 1972 institutional aid legislation. Several other educational bills introduced that year included similar provisions. An attempt to add one to the Senate's 1972 education bill failed on the floor, but was later adopted in modified form.

In the House, there was considerable debate over the provision, although it focused largely on undergraduate admissions. When the subcommittee exempted all undergraduate admissions from the provision, Rep. Green requested lobbying assistance from women's groups. They "heavily utilized sympathetic female Congressional staff members to place personal pressure" on members of the full Education and Labor Committee, and the exemption was reduced to cover only private and military college admissions.[52] Republican members dissented from this recommendation in the committee report, contending that it "represented further federal restrictions and controls over institutions of higher education."[53] When the full House considered the bill, it voted down the committee recommendation and again exempted all undergraduate admissions.

Despite this setback, the antisex discrimination provision fared well in the House-Senate conference committee. Essentially, the conferees combined the strongest elements of both the House and Senate bills into the toughest provision of all. This outcome reflected the diverse interests on the conference committee:

> Most of the higher education community spent their time trying to influence the outcome on other sections of the bill that they considered to be more important than the issue of sex discrimination. Without any organized opposition, and with Green pressing hard for adoption, the Conference Committee quickly adopted Title IX without giving much consideration to its eventual impact.[54]

Commenting on the conference bill, which passed both Houses with a strong Title IX, Fishel and Pottker note that:

> When Congress passed Title IX in 1972, it was voting for a general principle of equality; the specific implications of the law were understood by few members of Congress. While considering Sen. Birch Bayh's (D-IN) and Green's proposals, Congress was primarily concerned with the question of exempting from coverage particular types of schools and certain policies. Congress made no attempt to provide a clear and complete definition of what constituted sex discrimination in education. As a result, the real public debate on the issues involved in eliminating sex discrimination followed,

rather than preceded, the passage of the law.[55]

Once the law had passed, it took three years for the final regulations to be developed. Several factors were responsible for this, including ambiguous legislative intent; strong cross-pressures, both within the bureaucracy and from opposing groups on the outside; and an unusual number of clearance procedures which faced the regulations.

Due to superficial treatment and the symbolic nature of the law, legislative intent on Title IX was not clear.[56] Moreover, HEW's Office of Civil Rights (OCR), which had responsibility for drafting and enforcing the regulations, had very little experience in this area, so that its early draft regulations were largely "cut and paste" adaptations of Title VI of the *Civil Rights Act*.[57] These first draft regulations produced very heavy public comment, which was sharply divided between women's, teachers', and civil rights groups demanding stronger action, and education and administrative groups pushing weaker regulations. Fishel and Pottker explain the result: "Because of the absence of any kind of consensus, DHEW policymakers felt free to decide issues as they thought best from legal and policy perspectives."[58]

Some members of Congress became concerned about the direction the regulations were taking and began a series of challenges to them. An amendment to exempt revenue-producing sports passed the Senate in 1974 but was deleted in conference after an "all-out lobbying effort" by women's groups. In the House, an amendment to block effective enforcement of the regulations, sponsored by Rep. Marjorie Holt (R-MD) and supported by Rep. Edith Green, was approved by the full House. Fishel and Pottker note that:

> Green, who had been the House sponsor of Title IX, was upset by the interpretation DHEW had given to the law in its proposed regulation and . . . was working to negate the impact of the law she had previously worked so hard to get passed.[59]

Like several succeeding attempts, however, this action failed to gain the necessary approval by both Houses simultaneously. This failure has been attributed to the intense activity of various women's organizations, assisted by female staff of key Senators and Representatives.[60]

In July of 1975, the final Title IX regulations took effect. They were far-reaching and prompted the vociferous controversy that has been detailed above. Yet, considering their long and difficult development, the regulations cannot be said to have evolved without ample opportunity for oversight. Before taking effect, they were subject to approval by the Secretary of HEW, and, in fact, Secretary Weinberger made numerous substantive modifications. Moreover, both the President and Congress could have intervened to reject or alter the regulations, since the law required unusual Presidential and Congressional clearance procedures prior to implementation. But all of these steps resulted in only limited revisions; the basic thrust of the regulations was left unchanged. As Fishel and Pottker conclude:

> The alliance of members of Congress, Congressional staff members, and women's organizations working intensively on legislation relating to sexism in education has created a formidable obstacle to their opponents.[61]

FERPA

The origins of the *Family Educational Rights and Privacy Act of 1974* (FERPA; also known as the *Buckley Amendment*) lay in a series of reports in the early 1970s that documented problems concerning the disclosure and use of student records, primarily in elementary and secondary schools.[62] The *Buckley Amendment* sought to address these problems by requiring that educational institutions (1) provide student and parental access to educational records, allowing them to ascertain their content and accuracy, and (2) limit the disclosure on such records to others. The amendment applies to any educational institution receiving federal funds.

The *Buckley Amendment* was introduced on the Senate floor during debate over the *General Education Provisions Act of 1974*.[63] It was adopted there and was subsequently retained by the House-Senate conference. It had been subject neither to hearings nor to any major input from educators during its drafting, and "at the time, few educators were aware of it."[64] Although it was intended primarily to address problems in elementary and secondary education, higher education was added "as an afterthought."[65] *The Report of the Privacy*

Protection Study Commission determined that higher education was included in the act:

> . . . on the too simple assumption that the problems in both (higher education and basic education) are similar and that the same principles would apply equally well in both places.[66]

This assumption proved erroneous. The legislation suffered from major defects and had to be revised almost immediately.[67] Although professional educators had more input in the redrafting, "their role could only be responsive, not creative, and was, in the main, defensive."[68] The amendments to FERPA were passed once again by both Houses of Congress and were signed by the President in December 1974.[69]

Despite these revisions, higher education groups remain dissatisfied with FERPA, and they are seeking exemption from it. They object both to the costs it imposes on financially hard-pressed institutions and to its intervention into institutional administrative procedures. Testifying before Congress, a representative of higher education asserted that:

> The *Buckley Amendment* probably would not have become law insofar as higher education is concerned had there been opportunity for Congressional hearings and full consideration by the Congress. . . . Even with [the December 1974] changes, the *Buckley Amendment* . . . represents an unwise exercise of federal power.[70]

THE CURRENT STATUS OF REGULATION

Federal regulation of higher education may be entering a period of reevaluation. In the continuing controversy, opponents of these practices have dominated the discussion in educational circles thus far. The volume and forcefulness of their critiques have had some effect. There appears to be a new sensitivity to regulatory problems on the part of recent administrations. Charles Saunders, for example, has described a number of recent attempts to reform the administration of educational regulations.[71] Similarly, in a recent article, Stephen Bailey outlined several examples of Presidential and agency sensitivity to the appeals of higher education groups that the regulatory burden be eased.[72]

Congress has also displayed a growing sensitivity to regulatory issues. Several provisions of the *Education Amendments of 1976*—such as the administrative cost allowances, the mandates for the coordination of federal agency data gathering, and the mandated progress reports on paperwork reduction—illustrate that Congress has made some attempts to respond to the complaints of higher education groups and officials.[73] Additionally some of the more persuasive statements of the concerns of higher education leaders have been brought to the attention of the members of Congress. For example, Kingman Brewster's critique of federal regulation of higher education was inserted in the *Congressional Record* by Sen. Claiborne Pell, who stated:

> President Brewster's remarks are most cogent. . . . He pointed out that there is a growing amount of control by the government, not through direct intervention but through oblique approaches such as utilizing the colleges and universities for affirmative action programs. . . . Although his speech attacks some of the programs and bills which I have supported, I think his remarks should be read by every Senator.[74]

Similarly, Harold Enarson's comments were entered into the *Record* by Rep. Albert Quie, ranking Republican on the House Education and Labor Committee.[75] And former Rep. Edith Green, author of the Title IX sex discrimination provision in the *1972 Education Amendments*, has remarked:

> If I or others in the House had argued that this legislation was designed to do some of the things which HEW now says it was designed to do, I believe the legislation would have been defeated. I myself would not have voted for it, even though I feel very strongly about ending discrimination on the basis of sex.[76]

The crucial issue will be whether this reevaluation alters the political processes that generated these regulations in the first place. The answer to this is not yet clear. However, thoughtful observers are now beginning to address some of the most

fundamental questions concerning the federal role, such as:

1. Is it workable and productive to continue asking higher education to address a growing number of social objectives, however worthy each may be in its own right?[77]

2. Aside from the question of proper federal goals, what means are appropriate in their pursuit?[78]

3. Most generally, what is the proper extent of the federal role in the various spheres of higher education policy?[79]

FOOTNOTES

[1] See the discussion of the tax credit debate in Chapter 1 of this volume, entitled "Recent Legislative Actions."
[2] Rainsford, *op. cit.*, p. 100.
[3] *Ibid.*, pp. 110–111.
[4] See, for example, Title XII of the Higher Education Act of 1965 (P.L. 89-329), as amended in 1972, and Congressional Quarterly, *Congress and the Nation, Volume III*, *op. cit.*, p. 593.
[5] Henry Soloman, "The Growing Influence of Federal Regulations," *Educational Record* 58, Summer 1977, p. 282.
[6] Quoted in Gladieux and Wolanin, *Congress and the Colleges*, p. 37.
[7] These schools were not alone. As a Carnegie Commission report observed: "In 1952, the Commission on Financing Higher Education made a strong plea in its report for a 'halt to the introduction of new programs of direct federal aid to colleges and universities' and further stated, 'We also believe it undesirable for the government to expand the scope of its scholarship aid to individual students.' . . . Realities . . . have led all the major higher education associations and several commissions, including this one, to call upon the federal government for increased levels of support for higher education and for programs that provide direct institutional grants to be used by institutions for general educational expenses." Carnegie Commission on Higher Education, *Institutional Aid*, pp. 9, 11.
[8] Lawrence Gladieux and Thomas Wolanin, "Federal Politics," in David Breneman and Chester Finn, eds., *Public Policy and Private Higher Education*, Washington, DC, Brookings Institution, 1978, p. 229.
[9] Gladieux and Wolanin, *Congress and the Colleges*, *op. cit.*, p. 205–206.
[10] *Ibid.*, p. 226.
[11] Except for the last item, this list is taken from Carol Van Alstyne and Sharon Coldren, *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities—Special Report*, Washington, DC, American Council on Education, 1976, pp. 5–6.
[12] "Will Government Patronage Kill the Universities?" *op. cit.*, p. 12.
[13] Enarson, *op. cit.*, p. E3594.
[14] *Change*, September 1975, pp. 38, 42–43.
[15] 3 CFR 1964–65 Comp., pp. 339–348.
[16] Soloman, *op. cit.*, pp. 272, 277.
[17] John A. Howard quoted by Ralph Kinney Bennett, "Colleges Under the Federal Gun," reprinted in *Congressional Record*, June 24, 1976, p. E3596.
[18] Van Alstyne and Coldren, *op. cit.*, p. 14.
[19] *Change*, *op. cit.*, p. 10.
[20] Van Alstyne and Coldren, *op. cit.*, p. 28.
[21] Enarson, *op. cit.*, p. E3594.
[22] Soloman, *op. cit.*, p. 289.
[23] Excerpts from remarks printed in the *Congressional Record*, March 10, 1975, p. S5828. See also "The Federal Conditional Spending Power: A Search for Limits," *Northwestern University Law Review*, May–June 1975, pp. 293–330.
[24] For example, Finn observes that: "At Harvard, the 'medical area' schools of medicine, public health and dentistry—received 61% of its income from federal sources in 1973–74, and in doing so accounted for more than half of the entire university's federal revenues; by contrast, the law school obtained just 5% of its receipts from the federal government, the business school 2%, the school of design 10%, and the divinity school none at all." *Op. cit.*, pp. 522–523.
[25] Quoted in Bennett, *op. cit.*, p. E3596. This practice has been challenged in a court suit brought by Grove City College in Grove City, PA. To date, however, this challenge has been unsuccessful. See Gene Maeroff, "College Challenges Federal Intervention," *The New York Times*, April 10, 1979, p. C1; and Gene Maeroff, "College Wins Tentative Victory," *The New York Times*, March 18, 1980, p. A15.
[26] Marilyn Gittell, "The Illusion of Affirmative Action," *Change* 7, October 1975, p. 41. See also Janet Battaile, "Study Finds Few Gains by Women on Staffs on Colleges Since U.S. Outlawed Discrimination in Education," *The New York Times*, April 8, 1978, p. A24.
[27] Gittell, *op. cit.*, p. 39.
[28] Stephen K. Bailey, "The Peculiar Mixture: Public Norms and Private Space," in *Government Regulation of Higher Education*, edited by C. Hobbs, Cambridge, MA, Ballinger Press, 1978, p. 110,
[29] Roger Heyns, "Our Best Defense Against Government Regulation," *Educational Record* 58, Fall 1977, p. 353.
[30] See Janet Hook, "Renovations for Handicapped Students Cost Less than Expected, Colleges Find," *The Chronicle of Higher Education*, September 29, 1980, p. 15.
[31] Charles B. Saunders, Jr., "Easing the Burden of Federal Regulation: The Next Move is Ours," *Educational Record* 57, Fall 1976, p. 217.
[32] Soloman, *op. cit.*, pp. 277–278.
[33] This has received the most attention, largely because: "Of all the many areas in which women's rights legislation has been submitted, it has achieved its greatest success in the area of education." Jo Freeman, *The Politics of Women's Liberation*, New York, NY, David McKay Co., 1975, p. 222.
[34] Van Alstyne and Coldren, *op. cit.*
[35] See Volume VII of this series, *Protecting the Environment: Politics, Pollution, and Federal Policy*.
[36] Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design* (A-52), Washington, DC, U.S. Government Printing Office, 1978, p. 237.
[37] *Ibid.*
[38] Freeman, *op. cit.*, p. 204
[39] Steven L. Abrams, "The Significance of Congressional Change for American Public Policy," senior thesis, Government Department, Harvard University, Cambridge, MA, 1980, p. 67.
[40] Gary Orfield, *Congressional Power: Congress and Social Change*, New York, NY, Harcourt, Brace, Jovanovich, 1975, p. 299.

[41] Freeman, *op. cit.*, p. 178.
[42] *Ibid.*, p. 54. The following section is based largely on her account.
[43] *Ibid.*, p. 229.
[44] 3 CFR, 1964–65 Compilation, pp. 339–348.
[45] CACSW was established by E.O. 11126 on November 1, 1963.
[46] 3 CFR, 1966–1970 Compilation, pp. 684–686.
[47] Freeman, *op. cit.*, p. 194. Actually, E.O. 11375 went beyond contemporary legislative enactments as they applied to educational faculty. Title VII's job discrimination provisions specifically excluded teaching personnel. *The Equal Pay Act of 1962* did not apply to administrative, executive, or professional workers. E.O. 11375 included both categories if employed by a federal contract recipient.
[48] The discussion of Title IX rests primarily on the account by Andrew Fishel and Janice Pottker in *National Politics and Sex Discrimination in Education*, Lexington, MA, Lexington Books, 1977, pp. 95–155.
[51] U.S. House of Representatives, *Hearings before the House Special Subcommittee on Education, Committee on Education and Labor on Discrimination Against Women*, 91st Cong., 2nd Sess., 1970.
[52] Fishel and Pottker, *op. cit.*, p. 101.
[53] *Ibid.*
[54] *Ibid.*, p. 103.
[55] *Ibid.*, p. 132.
[56] "Because of the absence of an extensive history, exactly what Congress had intended when it passed the law was unclear in many areas. In addition, there was only a limited amount of case law on sex discrimination in education . . ." *Ibid.*, p. 107.
[57] *Ibid.*, p. 106.
[58] *Ibid.*, p. 115.
[59] *Ibid.*, p. 114.
[60] *Ibid.*, pp. 113–118.
[61] *Ibid.*, p. 139.
[62] These include: Russell Sage Foundation, *Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records*, Report of a Conference on the Ethical and Legal Aspects of School Record Keeping, June 12–14, 1972; and particularly National Committee for Citizens in Education, *Children, Parents, and School Records*, Columbia, MD, National Committee for Citizens in Education, 1974.
[63] P.L. 93-380.
[64] "Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission," in U.S. House of Representatives, *Hearing before the Subcommittee on Elementary, Secondary and Vocational Education, Committee on Education and Labor on H.R. 15, Part 9: Family Educational Rights and Privacy Act of 1974*, 95th Cong., 1st Sess., 1977, p. 131.
[65] Ernest Gellhorn and Barry B. Boyer, "The Academy As A Regulated Industry," in Hobbs, *op. cit.*, p. 39
[66] "Personal Privacy in an Infomation Society," *op. cit.*, p. 131.
[67] In particular, the original act prohibited schools from disclosing infomation to parents of students 18 years and older, without first obtaining student consent. This was amended to permit disclosure to parents of financially dependent students.
[68] *Ibid.*
[69] P.L. 93-568.
[70] Statement of David Steiner, in "Personal Privacy in an Information Society," *op. cit.*
[71] Saunders, *op. cit.*, pp. 218–222.
[72] Bailey, *op. cit.*, pp. 107–109.
[73] *Ibid.*, p. 108.
[74] *Congressional Record*, March 10, 1975, p. S5827.
[75] *Congressional Record*, June 24, 1976, p. E3593.
[76] Quoted in Bennett, *op. cit.*, p. E3596.
[77] Heyns writes: "Regulations develop because the people through their elected representatives have implemented a large number of our national goals into laws, which in turn obliges government to ensure that the laws are understood and complied with. . . . Most of us would not argue for the repeal of any of these national goals. . . . It is the number and scope of our national goals stated in terms of law that are overwhelming us." *Op. cit.*, pp. 350–351.
[78] Brewster deals with this question, stating "The essence of Constitutional restraint . . is that the worthiness of the end should not justify objectionable means. . . . We must be . . . vigilant about the use of the spending power as a lever to extend regulation beyond the accountability reasonably related to the purposes for which the support is given." *Op. cit.*, p. S5828.
[79] One observer, attempting to redefine part of this role, writes: ". . . there is also the prospect of a new relationship. . . . On the campus, yesterday's partner now appears increasingly as today's oppressor, indispensable but stingy, and ever more intrusive . . . [but] the federal government and the American research university continue to need each other. . . . [A] high level of national interest in the university's services remains, and still includes a substantial national security component. As for the research university, its dependence on national government for support of much of its large-scale research is natural and unavoidable. The issue for the university, therefore, is not dependence on government, but the degree and conditions of an inevitable dependence." Stephen Muller, "A New American University?" *Daedalus* 107, Winter 1978, p. 33.

Chapter 7

Recent Legislative Actions

Although the federal regulatory presence in higher education has increasingly been the focus of policy debate, two additional issues in recent years have received attention in the higher education community which deserve mention: (1) the near passage of tuition tax credits, and (2) the creation of the new Department of Education. Neither of the two issues was of exclusive concern to the higher education community since each also had important, though different, implications for elementary and secondary education. Hence, both are also discussed in Volume V of this report, *Intergovernmentalizing the Classroom: Federal Involvement in Elementary and Secondary Education.*[1] For a more thorough treatment of the issues, the reader is referred to that volume. The following discussion will highlight the significance of tuition tax credits and a separate department of education for higher education, and the perspectives of the higher education community regarding each.

TUITION TAX CREDITS

In 1978, Congress came very close to approving a program of federal tuition tax credits in response to widespread political support for some type of aid for middle income families with children in college. Such an approach to the "middle income squeeze" had long been a favorite in the Senate where similar proposals had been passed several times in the past. However, until 1978

the House Ways and Means Committee had consistently blocked all tax credit proposals. The 1978 proposal, had it been enacted, would have allowed a credit against the federal income tax of 35% of paid tuition up to a maximum of $100 in calendar year 1978, increasing to $250 in 1981, for every full-time student enrolled in a postsecondary institution. The estimated loss in federal tax revenues would have been $330 million in fiscal year 1979, increasing to $845 million in fiscal 1982. Thus would have represented a major financial commitment on the part of the federal government, with potential for rapid expansion.

Initiative for the tax-credit approach for college tuition relief came almost exclusively from Congressional backers, especially those in the Senate. They cited the plights of both middle-class families and private institutions as the basis for their endorsement. An advantage of the tax credit proposal, according to its supporters, was the ease with which it could be administered. As Sen. Bob Packwood (R-OR), a chief sponsor of the legislation, wrote:

> Stripped of the veneer, the sole issue is a question of philosophy: Should we leave the choice to the individual, given the simple incentive of the income tax, or should we leave the decision to the bureaucrats with the maze of regulations and forms that come with direct government grants.[2]

The strongest opposition to the tax-credit bill came from the Carter administration and from lobbyists for public elementary and secondary schools. Acting on the advice of HEW, the Department of Treasury, and Office of Management and Budget officials, President Carter opposed the enactment of tax credits at any level of education. Opposition was due primarily to its expense in terms of forgone tax revenues but also to its fiscal regressivity. When the elementary and secondary education credits were added to the House bill, opposition to the proposal dramatically increased, especially from the public school lobby. Highly charged arguments that elementary and secondary tax credits would undermine the public schools, subsidize middle class and white-flight, and violate the Constitutional separation of church and state dominated the debate and led to the final death of the bill.

On the other hand, tax credit proposals have generated neither ardent opposition nor unified political support from either public or private higher education lobbyists. Some individual higher education leaders have argued that tax credits have the advantage of maintaining the diversity that private colleges offer without hurting worthy public higher education objectives.[3] However, the college and university groups did not spend much time working on the college credits. Thus, when Carter finally proposed an alternate approach to financial relief for middle income families with a focus on student aid programs and financial need, most of the higher education groups rallied around his plan because it cost less and kept federal policy on familiar ground.

The stumbling block to final enactment of the tax bill was Senate opposition to the House-sponsored extension of benefits to parents of elementary and secondary students. When the two bills were sent to a conference committee for final reconciliation, Senate conferees agreed to cut the bill's maximum individual tax break in half in return for the removal of the elementary and secondary provision. In a surprise move, however, the full House voted to recommit the conference report with instructions to restore the elementary and secondary credit, and thus effectively killed the bill. With any form of tax credit facing a Carter veto, an administration-backed expansion of college student grants and loans to include middle class families was passed in the waning moments of the 95th Congress.[4]

That legislation, the *Middle Income Student Assistance Act*,[5] removed the family income limitation that governed eligibility for subsidized student loans and expanded eligibility for Basic Educational Opportunity Grants to include students from families with incomes between $15,000 and $25,000. As anticipated, the response to the loosened eligibility requirements was "prompt and substantial,"[6] and by 1980 the burgeoning costs of the student loan program in particular had become a major source of controversy surrounding the reauthorization of higher education programs.

DEPARTMENT OF EDUCATION

When President Carter pledged to the NEA during his 1976 campaign that he would actively pursue the creation of a separate department of education, the response of the higher education

community was decidely lukewarm.[7] The higher education organizations failed to adopt a unified position either in support of, or in opposition to the proposed department. Some organizations, such as the American Association of University Professors (AAUP) and the American Association of Community and Junior Colleges (AACJC), actively supported a separate department. Others, such as the Association of American Universities (AAU) and the California State University and Colleges system, joined with individual presidents and chancellors of major universities (including Howard, Columbia, Stanford, and the University of Illinois) in opposing its establishment. The American Council on Education (ACE), the umbrella organization established to help coordinate higher education's relationship with federal government, took no official position on the issue.[8]

The two reasons most frequently cited for supporting the proposal were the increased visibility and administrative efficiency that a separate department would afford federal higher education programs.[9] For instance, according to one lobbyist, "Hopefully now that education will be removed from HEW, it will reduce the amount of time it takes to make money available to higher education institutions and the time it takes to get regulations approved."[10] But opponents found neither claim convincing. Critics of the proposed separation argued that organizational changes do not necessarily lead to better program administration or increased prestige, especially since the most difficult problems facing education are programmatic rather than organizational. On the other hand, they argued, a more predictable outcome of a separate department would be an increase in federal regulation. As Jack Peltason, president of ACE, verbalized the dilemma facing the higher education community:

> How you react to a department of education depends on whether you are a captive of your fears or your hopes. The fears are of greater regulation, and the hopes are that the department will be a platform for greater visibility.[11]

While the fear of increased regulation dominated the concerns of the opponents of a separate department, they had other worries as well. For instance, many felt that higher education would be a low priority in the new department because of the leadership role played by NEA in its establishment and because of the large percentage of the budget consumed by elementary and secondary programs. Although Congress did not approve a proposal to create two undersecretaries—one for elementary and secondary and one for higher education—it did agree to allocate one of six assistant secretary positions to postsecondary education.

Moreover, because of the peculiar mix of programs that affect higher education, many critics saw little hope or justification for their consolidation in a single department. For instance, one of the largest federal programs in support of higher education, the *GI Bill of Rights*, "was enacted primarily as an unemployment and income-security program,"[12] and lobbyists for the veterans were adamant in their opposition to its transfer from the Veterans Administration. Similarly, research funds that eventually find their way into institutions of higher education and on which many of those institutions are dependent are scattered throughout practically every federal department, and there never was much likelihood of their consolidation. In addition, because much of the higher education budget is allocated to student aid programs that are more similar in their administration to welfare programs than to the major elementary and secondary programs, the argument was made that removing them from HEW would hurt more than it would help:

> . . . more than 90% of the funds committed to higher education are in reality channeled to and for individuals, making them in reality welfare programs; and as welfare programs they justifiably fit into the bigger picture of Health, Education, and Welfare—not as a separate entity.[13]

In the end, those who had argued against the feasibility or desirability of consolidating the programs affecting higher education were proven correct, for the department as it was finally constructed included only a few higher education programs from outside the Education Division of HEW.

Many higher education organizations eventually did throw their support behind the new department when it began to appear inevitable that Congress would pass the legistation, but their endorsement was frequently unenthusiastic and tempered with a "wait and see" attitude. Nor have

their misgivings been assuaged since the department began operating in May 1980. Although most of the higher education community approved of the selection of Albert H. Bowker, retired chancellor of the University of California at Berkeley, as Assistant Secretary for Postsecondary Education, it was harsh in its criticism of the department's weak lobbying efforts on behalf of the 1980 reauthorization of higher education programs.[14] Lobbyists complained that department personnel were unable to provide needed information to evaluate proposals, that they were slow in preparing their own legislative proposals, and that on the whole their influence in drafting the final bill was minimal. Additionally, seven higher education organizations—including ACE, AAU, the National Association of Independent Colleges and Universities, and the Association of Catholic Colleges and Universities—sent a strongly worded letter to the Secretary of Education expressing two concerns regarding the development of the agency's structure and functions: first, that the department's organizational structure "retains the top-heavy layer of staff officials whose infinite capacity to second-guess and delay the decisions of program officials was one of the most grievous faults of the organizational pattern that existed under the Department of Health, Education, and Welfare;" and second, that it is a violation of the legislation to list as a function of the Office of Postsecondary Education the "fostering of higher standards in postsecondary programs" as published in department briefing materials.[15]

Thus, the Department of Education is clearly engaged in an uphill struggle to gain the confidence of the higher education community. As one commentator put it:

> To keep the department from being tested prematurely and deflected into purely defensive postures, Education's new leadership will have to reach out early and reconstruct the former coalition of interests that was sundered in the legislative acrimony accompanying the department's birth. The department faces a most uncertain future unless it can win support from the ... host of ... organized interests that either opposed or were monumentally indifferent to its creation.[16]

FOOTNOTES

[1] Advisory Commission on Intergovernmental Relations, *Intergovernmentalizing the Classroom: Federal Involvement in Elementary and Secondary Education*, A-81, Washington, DC, U.S. Government Printing Office, 1980.

[2] Bob Packwood, "Tuition Tax Credits: A Philosophical Question," letter to *The Washington Post*, April 27, 1978.

[3] See David G. Brown and Thomas E. Wenzlau, "A View from the Campus," in *Public Policy and Private Higher Education*, edited by David W. Breneman and Chester E. Finn, Jr., Washington, DC, The Brookings Institution, 1980, pp. 397–398; Lawrence E. Gladieux and Thomas R. Wolanin, "Federal Politics," p. 223; William McNamara, "The Tax Credit Debate," *Change* 10, March 1978, pp. 44–45; Rochelle L. Stanfield, "Political Maneuvering Over Tuition Tax Credits," *National Journal*, July 22, 1978, pp. 1157–1159; and Rochelle L. Stanfield, "The Taxpayers' Revolt, Part II—Education Aid for Everybody?", *National Journal*, April 1, 1978, pp. 509–514.

[4] See "Tuition Tax Credit Fails Under Veto Threat," *Congressional Quarterly Almanac, 1978*, Washington, DC, Congressional Quarterly, 1978, pp. 248–256.

[5] P.L. 95–566. See "College Student Assistance," *Congressional Quarterly Almanac, 1978*, pp. 568–571.

[6] David W. Breneman and Susan C. Nelson, "Education and Training," *Setting National Priorities: Agenda for the 1980s*, edited by Joseph A. Pechman, Washington, DC, The Brookings Institution, 1980, pp. 242–245.

[7] See Edward C. McQuire, "Let's Not Take Education Out of HEW," *Chronicle of Higher Education*, March 5, 1979, p. 72; Beverly T. Watkins, "Some Educators Are Jubilant, Others Wary as Carter Gets Education Department Bill," *Chronicle of Higher Education*, October 9, 1979, pp. 11–12; and Rochelle L. Stanfield, "There's a Lesson to Be Learned Over a Department of Education," *National Journal*, July 23, 1977, pp. 1149–1153.

[8] Watkins, *op. cit.*, p. 12.

[9] Samuel Halperin, "The Federal Future in Higher Education," *Change* 10, February 1978, pp. 24–26.

[10] Watkins, *op. cit.*, p. 12.

[11] Quoted in *ibid.*

[12] McQuire, *op. cit.*, p. 72.

[13] *Ibid.*

[14] See Janet Hook, "Carter Picks Berkeley's Bowker for Top Higher-Education Post," *Chronicle of Higher Education*, March 10, 1980, pp. 13–14, and "Compromise Student-Loan Plan Voted by House-Senate Conferees," *Chronicle of Higher Education*, August 25, 1980, pp. 17–18.

[15] Letter to Hon. Shirley M. Hufstedler, Secretary of Education, April 2, 1980.

[16] Samuel Halperin, "The Department of Education: Last but Not Least," *Change* 11, November–December 1979, p. 37.

The Political Dynamics of Federal Involvement: A Summary Analysis

POLICY ANALYSIS: ACTORS AND PROCESS

This case study suggests that policy innovation in higher education has largely been the product of policy entrepreneurs in the executive branch and in Congress. Parties, public opinion, and interest groups, which are often thought to be central to the initiation of policies in this country, have generally been supportive of federal initiatives. But, to varying degrees, they have essentially been secondary actors in the policy process.

Policy Entrepreneurship

Policy entrepreneurship refers to a situation in which elite political actors are able to formulate and advance new policies largely on their own initiative. It assumes that broad popular, partisan, or group support can make higher education an attractive but not compelling arena for policy innovation. Entrepreneurs are left sufficient flexibility to choose among arenas of activity, to define the character of their involvement and the substance of their initiatives, and to mobilize support for their decisions.

The entrepreneurial pattern emerges strongly from enactments in the 50s and 60s. The *NDEA* owed its origins to then-HEW Secretary Folsom and Assistant Secretary Richardson, on the one hand, and to Sen. John Sparkman and Rep. Carl Elliot on the other, who devised legislation able

to capitalize on the crest of public concern about American science. The *Higher Education Facilities Act of 1963* and the *Higher Education Act of 1965* were very much the products of active Presidential involvement, with important roles also played by top political officials in HEW and key members of Congress. Writing about these acts, Gladieux and Wolanin conclude that:

> Administration leadership was a chief characteristic of the policymaking process. Major higher education proposals, beginning with *NDEA*, emanated from the executive branch. Congress was not a rubber stamp.... However, through 1968, the dominant pattern of policymaking was executive branch initiative followed by Congressional response.[1]

The Nixon Administration furthered this process of high-level White House participation in higher education policymaking. The judgment of many informed observers at the time was that, "many decisions are being made in the Executive Office Building."[2] But as these Administration proposals were largely stillborn, the policy initiation role shifted to education specialists in Congress. There, policy entrepreneurs produced and guided to passage substantial legislative innovations, as Gladieux and Wolanin attest.

> The formulation and enactment of the *Education Amendments of 1972* demonstrate Congressional initiative in domestic policymaking. While on the basis of this case one is hardly led to proclaim Congressional dominance or even resurgence, it suggests that in some circumstances, as when the executive branch abdicates or is passive, Congress can be a reservoir of innovative thinking and constructive action on the domestic front.[3]

The Congressional entrepreneurs were essentially key subcommittee members in the House and Senate. As Congressional specialists in educational policy, these members are part of what might be called the higher education policy subsystem. With professionals in higher education and the Department of Education (previously the Office of Education), they share a commitment to education and a dedication to providing additional resources.[4] In basic matters of policy, however, they can act independently of higher education groups and agency specialists, selectively choosing among their varied and often conflicting suggestions. The 1972 amendments highlighted the differences between certain Congressional entrepreneurs who were interested in pursuing innovative policy approaches, on the one hand, and on the other hand interest groups and their allies.

Similarly, during the passage of the legislation reauthorizing higher education programs in 1980, agency specialists were frequently at odds with Congressional subcommittee members and the lobbyists. While the lobbyists were quite effective in working with the subcommittee and in influencing the substance of the legislation, Department of Education officials (and, in the early stages of developing the legislative package, HEW officials) were severely criticized "for failing to provide information [Congress] needed to evaluate proposals and for failing to present clear positions on key issues."[5] Thus, there is very little evidence that an impenetrable "iron triangle" has evolved in the higher education subsystem. In fact, in the past 20 years the various participants frequently have appeared to be working at cross-purposes with one another.

The pattern of legislative entrepreneurship in higher education policy is evident in other spheres as well. The tuition tax credit is one of the most significant innovations recently proposed in education. It is almost entirely a Congressional initiative, but, unlike other recent legislation, its major proponents are not specialists from the education committees. Rather, it appeals to a broad coalition of legislators, while many specialists both in and out of Congress tend to oppose it.

The politics of regulation has been equally entrepreneurial. E.O. 11246, Title IX, and the *Buckley Amendment* were all advanced through the actions of a few individuals. Fishel and Pottker, for instance, conclude that "a relatively few women in Washington have been able to achieve significant results to protect and advance the rights of women in education...."[6] In the case of Congressional actions, a small number of concerned members have been able to achieve significant and independent policy objectives through persistent efforts. Working closely with Congressional staffs and with representatives of several women's groups, they have formed a network which Prof. Freeman calls "woodwork feminists:"

> There were a large number of "woodwork feminists" in the federal government. . . . This incipient network . . . was already emerging around education legislation. Of all the many policy areas in which women's rights legislation has been submitted, it has achieved its greatest success in the area of education. This is partially because . . . there were a lot of feminists in the House Education and Labor Committee. . . . Thus, it was easy to set up a symbiotic relationship between feminists interested in education and committee members interested in women's rights.[7]

A number of important bureaucratic actors have been part of the "woodwork" phenomenon as well. Former Assistant Secretary of Labor Esther Peterson's role in the creation of E.O. 11246 stands out as one example.[8] As Fishel and Pottker have written:

> . . . great numbers of qualified women over the years have sought employment with the federal government, thus creating the nucleus of support for government action on women's issues that could be tapped at a later time. . . . [W]hen the women's rights movement began, these highly placed women . . . were in the right positions to help accelerate the goals of the liberation movement as it picked up speed. As a result, these women would often serve as catalysts for change on public policies affecting women.[9]

By and large, however, the bureaucratic role has not been "imperialistic." The executive branch bureaucracy was not very influential in the development of women's legislation and actually opposed much of it.[10] Pseudobureaucratic actors, such as federal task forces and growing legislative staffs, played much more vital roles at this stage. The former helped provide research on which the groups and legislative entrepreneurs could base proposals, and the latter were important in developing and passing regulatory legislation.

Once legislation was passed, the major bureaucratic actors remained hesitant to enter the field of sex discrimination in higher education. The Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance (OFCC), and the Office of Civil Rights (OCR) all had their regulatory roles thrust upon them. The experience with Title IX regulations, which were explicitly modeled after Title VI of the *Civil Rights Act*, suggests that bureaucratic policy input was guided more by standard operating procedures than by imperialistic objectives.[11] This may, of course, change as these agencies develop an institutionalized involvement in sex discrimination (Title IX sex discrimination complaints totaled 40% of all complaints filed with OCR in 1975,[12] the HEW Office of Contract Compliance established a higher education division in 1972); but such institutional interests were essentially the product of the entrepreneurial activities of others.

Political Parties

The political parties have played two rather different roles in the creation of higher education policy. As mass-based conduits of public opinion, parties have played a fairly limited role. They have helped to establish broad mandates and opportunities for "action," but they have had only modest impact on the substantive content of policy. As parties have been represented by certain elite actors, they have been a more crucial determinant of policy formation. Such actors have frequently sharpened and refined party differences. However, their activities have more often served to reinforce an entrepreneurial pattern of policy development than a party-oriented one.

Since the New Deal, the Democratic Party has more actively favored federal aid to education than have the Republicans. As a rule, the degree of federal intervention into new domestic functions has been highly correlated with party preference.[13] Party platforms on aid to education support this distinction.[14] However, party preferences can explain only a part of the educational policy process.

To begin with, there is no absolute correlation between party and educational policy initiatives. The *NDEA* may be attributed more or less equally to the Eisenhower Administration and key members of the Democratic Congress. The 1972 amendments eventually required support from the Administration as well as key Democrats in order to pass in their final form, and naturally they required signature by a Republican President. Interestingly enough, the original Nixon

proposals were criticized by Democrats as well as Republicans in Congress for their "overemphasis" on targeting to the needy and their failure to provide enough relief for the middle class. In fact, both the major acts of 1965 and 1972, as well as the revisions and extensions in 1976 and 1980, attracted broad bipartisan support in the Congress.

The activist wing of the Democratic Party has lent vital force to the development of new programs in higher education, however. There was considerable difference between the relentless pressure for legislation from Presidents Kennedy and Johnson and the reluctant approach by the Eisenhower Administration. Even President Carter—although he did not support major new initiatives in higher education—did press for an extension of federal benefits to middle income families in 1978 and for the separation of education programs from health and welfare programs in 1979. President Reagan, on the other hand, has promised to pursue the dismantlement of the Department of Education. Democratic Congressional activists have been equally crucial in the formation of higher education policy. Among others, the major roles of Sparkman, Brademas, and Pell in spending programs, and Green, Bayh, and Griffiths in regulatory policy clearly stand out.

This represents, in part, popular partisan mandates for "action" in education. But, as substantive policy content has usually not been electorally specified, a broad gap has been left for policy entrepreneurs. These actors have had sufficient flexibility to choose education as an area for action and then to mobilize support for it. Broad popular and partisan support made education an attractive but not necessary initiative.

Interest Groups

Like political parties, higher education interest groups have been secondary actors in the initiation of higher education policy, although there is some evidence that their influence has been increasing in recent years. As already discussed, the higher education community has traditionally been somewhat aloof from politics. Far from being responsible for most major federal programs, the associations developed largely in response to them. Prior to 1970, at least, the higher education associations were often notorious for their lack of influence, their failure to present a common position, and their inability to provide Congress with the information it needed. One of the primary problems confronting the higher education community has been its considerable fragmentation, since the interests of various institutions—public and private, large and small—often conflict. As late as 1980, former Commissioner of Education Ernest L. Boyer lamented the difficulty the higher education groups had behaving as a community:

> Certain fundamentals are shared of course, but on most issues institutional self-interests act as barriers to anything even approaching a common voice.[15]

During the 1972 reauthorization of higher education programs, the various associations and many college and university leaders attempted for the first time to influence the debate from the beginning and to present a unified position in support of a program of no-strings capitation grants. Their strategy failed, however, because they totally misjudged the depth of Congressional and executive branch commitment to the student aid focus in higher education policy. Perceived by many members of Congress as self-serving and politically naive, the lobby exerted minimal influence on the final legislation. By 1980, the higher education community had grown significantly in political sophistication. Although still riddled with factions, it had by then accepted the student aid approach and received high marks from Congressional staff members for presenting more precise positions and for being willing to compromise when necessary.

Moreover, the lobby may have more significant influence in opposing federal actions that it finds disagreeable, and it appears to be emphasizing such activity increasingly.[16] The campaign against regulation, for instance, has had some success in raising Congressional and administrative awareness of the problem, and the high level of interest group activity in this area may be an indication of the future. To date, it has helped to distinguish regulatory politics from the traditional pattern of modest group activity.

The impact of higher education associations on regulatory policy, however, has been complicated by the presence of relatively aggressive lobbyists representing the clientele groups that benefit from strict enforcement of regulatory measures. For instance, women's groups have played a strong and

increasingly significant role in the politics of prohibiting sex discrimination in education. Women were influential in the formulation and passage of several regulatory measures, and the women's lobby has played an active role in the implementation of this legislation. Initially, much was accomplished by "a relatively few women in Washington."[17] By focusing their attention on the federal government, they were able to use their limited resources to the best advantage in attaining national impact.

Like the higher education groups, the women's groups developed largely in response to Congressional passage of major pieces of legislation. This was very clear in the case of the *Civil Rights Act* and NOW, of E.O. 11246 and the higher education campaign, and even, to some extent, in the case of Title IX, as Fishel and Pottker point out: "A byproduct of the Congressional battles over Title IX has been the emergence of a strong women's lobby on sex discrimination issues."[18] Freeman rightly concludes that the relationship between women's organizations and federal programs and policies has been a symbiotic one.[19]

Public Opinion

Public opinion has generally favored increased federal spending for domestic social programs since the New Deal. Federal aid to education has been no exception. Although no figures are available for most years on aid to higher education itself, there has consistently been public support for the more controversial question of federal aid to elementary and secondary education.[20] When public attitudes on the specific question of federal aid to college students was measured in 1966, after passage of the 1965 act, strong public support for the legislation was registered. A Louis Harris poll found that 89% of the sample approved of the 1965 college scholarships.[21]

This support is reaffirmed by more recent polls on federal student assistance. In 1973 and 1974 Watts and Free asked whether federal spending for a number of federal domestic programs should be increased, maintained, decreased, or ended. For programs aiding needy students, 54% of respondents favored increased spending in 1973, 55% in 1974.[22]

These figures demonstrate substantial public support for the concept of federal aid to higher education. They do not, however, address the actual role of public opinion in the initiation of various higher education programs. In fact, with the notable exception of *NDEA*, public opinion has not been closely identified with the development or passage of particular programs and program trends in federal aid to higher education. Public opinion does not tell us why particular legislation was established or when and how it was enacted. Surges of public opinion are not generally associated with the adoption of various programs. If anything, long-term public support without corresponding action suggests weak or superficial influence from public opinion. Nor can the evolution of federal higher education legislation, from defense-related research to equal opportunity student assistance, be identified causally with changes in public opinion. Other factors were far more proximate causes of these developments.

Once again, the politics of regulation in higher education can be differentiated from this broader pattern. Although it was not the most significant determinant of regulatory policy, public opinion certainly contributed to the symbolic character of regulatory politics. It was this politics of symbolism, within the context of "striking . . . Congressional . . . superficiality,"[23] which helped to make the entrepreneurial pattern of regulatory policymaking possible.

FORCES AND RATIONALES OF GREATER FEDERAL INVOLVEMENT

In both the spending and policymaking arenas, it appears that public opinion is most usefully interpreted as establishing the parameters of higher education policymaking. It is not unlikely that Congressional resistance to higher education scholarships reflected to some extent an interpretation of popular values and preferences. Whether these attitudes and values had so changed between 1963 and 1965 as to allow passage is doubtful, however. Thus, within the vague—and flexible—parameters of acceptable action established by public opinion, various political actors have had sufficient latitude to embark on a broad range of policy alternatives, from inaction to action in varying directions.

Important among the forces that have shaped the federal role in higher education have been

broad social and technological changes producing our increasingly complex and interdependent society. These forces have certainly increased demand for higher education and are viewed by some as sufficient in themselves to justify an expanded federal role. As former HEW Secretary John Gardner has said:

> No one knows how to best design the role of the federal government in education. But one thing is certain: with education playing a vastly more crucial role in our national life, there is no likelihood that the federal government can escape greater involvement in it.[24]

In addition, many believe that such social changes create externalities in higher education which require a greater federal share in its financing. In the 19th Century, for example, externalities contributed to the enactment of the *Hatch Act*, which established federal aid to agricultural research, because they created incentives for states to inadequately fund agricultural research. It was to no state's advantage to fully support research that would be used equally by those in other states. This, in turn, produced pressures for a larger federal role. Some advocates of greater federal involvement in higher education today resort to similar arguments,[25] but, on the whole, externalities have not been a primary justification for this. Other rationales, such as national defense and equal opportunity, have been much more important.

Another factor supporting a larger federal role has been the rising cost of higher education and the fiscal problems of many colleges and universities. This has been important in reversing the position of many in higher education, from opposing increased federal funding to demanding it. Moreover, it has ignited support for the tuition tax credit to help underwrite individual costs of college education.

To some extent, the financial problems of higher education reflect changes in demography and the labor market. Having expanded rapidly in an era of extraordinary growth, higher education is facing difficulties in adjusting to the slackening demand. However, in contrast to the usual pattern of federal intervention following the failure of states to act, current demands for federal involvement may result as much or more from successful state activity. The tremendous growth of low-cost public college education in the states has placed increasing pressure on private schools in the period of retrenchment.[26] This situation has driven to the federal government that segment of the higher education community most fearful of federal intervention in the past.

Another crucial factor shaping the federal role, which to some extent reflects the above changes, has been the transformation of the national agenda. The evolution of federal program rationales has reflected changing conceptions of national needs and legitimate national concerns, along with corresponding changes in political forces and demands. Thus, at various times, the dominant rationale for federal intervention has been to promote the disposition of public lands, to stimulate agricultural and technical education, to stimulate agricultural research, to ameliorate economic hardship during the Depression, to promote national defense and postwar economic readjustment, and to promote equal educational opportunity.

These transformations in the national political agenda have affected not only *what* the federal government has become involved in but *the manner* of its involvement as well. In each case, specific educational programs have been tailored to address a particular national problem of the day. In this way, the pattern of federal involvement in higher education has been both incremental and discrete, with categorical programs for new purposes gradually added to a residual of the old.

CONSTRAINTS ON THE FEDERAL ROLE

As definitions of national needs have changed over time, so have a variety of constraints on federal involvement in higher education. These constraints—constitutional, political, and fiscal—have acted to structure and define the federal role rather than to prevent it altogether. Interacting with transformations in the national agenda, these evolving constraints have served to reinforce the incremental pattern of federal involvement.

Constitutional Constraints

The Constitutional structure of federalism has constrained the national role of higher education from the beginning, although this factor has be-

come less important as broad interpretations of federal powers have gained prevalence. Such Constitutional constraints have taken two forms.

One is outright restriction of federal activity, as in the First Amendment separation of church and state. A subtler and more important Constitutional constraint has derived from the concept of a limited government. Because the federal government is one of enumerated powers, and since education is not included among its responsibilities, the scope of its Constitutional role in education depends upon interpretation of its implied powers. In fact, education is not mentioned at all in the Constitution, thus implying that major responsibility for it rests with the states or with citizens individually by virtue of the Tenth Amendment. The consequence has been that, as far back as the proposed National University, some opponents have considered federal involvement in higher education to exceed the narrow boundaries of national power. Most other attempts at federal involvement into education have been similarly opposed.

Perhaps the most important Constitutional influence on federal higher education policy has been in the choice of policy instruments. Rather than direct provision of services, the grant-in-aid technique was developed to permit a modicum of federal involvement on behalf of legitimate national purposes. Thus, along with changing conceptions of national needs, Constitutional constraints have helped to shape the pattern of federal intervention through use of specific grants for agriculture, defense, and equal opportunity-related purposes. From the *Morrill Act* to the present, this has proven the path of least Constitutional resistance.

Since enactment of the *NDEA*, however, Constitutional issues have not been very important in the policy debate. The constraints on forms of intervention appear to be more of a legacy of the past than live issues of the day. This situation reflects a somewhat paradoxical development in the nature of grants-in-aid as well as broader acceptance of a larger federal role. Although originally adopted and legitimized as a less intrusive instrument of federal intervention, grants have served to relax the Constitutional limits on federal intrusion, due to modern interpretations of spending power. These interpretations provide few restrictions on federal regulatory objectives as long as the regulations are pursued, indirectly, through the attachment of grant conditions. With massive dependence on federal funding, however, conditions attached to grants become as binding as any form of direct regulation. Thus, a century of using grants-in-aid to build a Constitutionally acceptable federal role in higher education yields the question: Is broad interpretation of the spending power making the Constitution irrelevant or obsolete?[27] At the very least, the Constitution has lost considerable effectiveness in limiting the intrusiveness of the federal role.

Political Constraints

Beyond these Constitutional issues, the nature and extent of the federal role in higher education has naturally been subject to the balance of political forces. The federal system complicates such political issues by adding to the basic question of *whether* government should be involved in a function that of *which* level (or levels) of government should be involved. Like the first, the assignment of functions question is unavoidably political because of its implications as to how a function will be addressed and who will bear the cost and benefits. Moreover, it involves basic ideological issues for a number of different groups or parties.

Opposition to federal involvement in higher education has never been as strong as that for elementary and secondary education. Higher education is not compulsory, and it may involve stronger national interests—like defense—and greater externalities. In addition, the popular appeal that aid to education enjoys, plus political demands arising from educational interests and spillovers, create incentives for political entrepreneurs to fashion higher education programs. As a result, the federal role has been larger in higher education than in basic education particularly as a percentage of total functional expenditures.

Nevertheless, opposition to new federal initiatives in higher education has certainly not been trivial. The long tradition of state and private responsiblity in higher education and the ideological and programmatic implications of federal aid have often created powerful constraints on expansion of the federal role. At various times major opposition has arisen from Jacksonian Democrats, from rural Republicans, and from business organizations. Each successfully blocked important federal involvement for years. What is more, the

structure of our political institutions, especially Congress, has enhanced the position of aid opponents. The numerous organizational hurdles make it possible for a committed minority to successfully check enlargement of the federal role. Such difficulties led one author to entitle his book on federal aid to education, *Obstacle Course on Capitol Hill.*[28]

The major effect of this pattern of opposition has been to reinforce the categorical aid approach in federal higher education assistance. As was shown, federal aid evolved in a series of specific programs directed at those needs enjoying relatively little controversy. In the beginning, this meant that federal involvement developed indirectly or sideways—involving higher education, but for reasons largely apart from it. As these programs gained acceptance, more recent legislation could address education directly, though continuing the categorical approach of identifying individual programs with least opposition or strongest backing. James Sundquist described this strategy in the *Higher Education Facilities Act*:

> . . . [T]he tacticians had learned [by 1963]. *The National Defense Education Act* had shown that special purpose aid, carefully designed, could be enacted at a time when general purpose aid could not be. A special purpose approach would make it possible for the tacticians to probe, jockey, negotiate, and compromise on a wide range of separable and lesser programs, and the antagonists could move quietly away from the irreconcilable positions . . . .[29]

The Christmas tree elements of the omnibus *Higher Education Act of 1965* and the 1972, 1976, and 1980 amendments affirm that this approach is alive and well.

The position of federal aid opponents appears much weaker today than was generally true in the past. An important federal role in assistance to higher education is established and generally accepted today.

The accumulation of categorical programs has affected this political balance on federal aid in two ways: First, it has tended to erode the position assumed by the most resolute and ideological aid opponents. Despite problems, which are mostly recent, federal aid has not simply and automatically brought the destruction of higher education or destroyed its independence. Secondly, federal aid programs have created clienteles and beneficiaries committed to their preservation and expansion. This process began soon after the *Morrill Act*, as farmers and land grant colleges began lobbying for federal research assistance. It continued dramatically during the 1960s with the institutionalization of higher education's organizational presence in Washington.

It is possible, however, that these processes are not unalterable. Opposition to expansion of the federal role is not dead, and it could be resumed. Higher education's Washington representatives can work to limit federal regulatory conditions as well as for increased funding, and the regulatory tendencies of recent years are already promoting renewed opposition to federal intervention in general.

Budgetary Constraints

A final limitation on the federal role in higher education has been budgetary constraints. Since most federal involvement has taken a monetary form (and most regulations are in the form of grant conditions), the federal role in higher education is dependent upon successful competition with alternative uses for available resources. The small size of the federal government before World War II necessarily meant that the federal role would be a limited one.

The Keynesian revolution and higher education's association with defense-related priorities of the postwar era altered this situation considerably, as we have seen. However, budgetary considerations remained a factor in limiting more direct forms of federal assistance. They played a major role in President Eisenhower's opposition to construction aid legislation, which he twice vetoed in 1959. They were evident again in former Rep. Quie's opposition to institutional aid in 1972.[30] They have been an important factor, as well, in the recent leveling off (and, with inflation, relative decline) of federal assistance to basic research in colleges and universities. Indeed, within the growth of total federal aid to higher education, the relative decline of some components, such as institutional aid and research, reflect considerably the budgetary tradeoffs required by priority-setting. In the 1980 reauthorization of student aid programs—which coincided with a Congressional and Presidential

effort to balance the budget—members of the Senate Budget Committee succeeded in convincing the full Senate that a bill hammered out in a House-Senate conference committee, which had strong support in the House and in the Senate subcommittee that authorizes higher education programs, was too expensive. The Senate voted the bill back to conference committee, where several significant cost-saving measures were finally agreed upon, although the legislation still represents an expansion in student aid benefits.

The impact of budgetary concerns is also evident in the recent expansion of regulatory programs. Whereas earlier programs delivered new federal aid to stimulate activities of federal interest, the current tendency is to add conditions and mandates to existing grants, forcing recipients to address the monetary consequences themselves.

FEDERAL INVOLVEMENT IN HIGHER EDUCATION: SPECULATION ON THE FUTURE

The future direction of the federal role in higher education appears uncertain at this time. Many of the forces that helped to form the current federal role continue to be active. Balanced against these, however, are a number of countervailing forces that may be gaining importance. The result could be a period of flux in the evolution of the federal role.

The pressures for additional federal involvement remain numerous. The complexity and interdependence of society and technology continue to increase. In the past these developments tended to stimulate growth in higher education. For example, growing demand for tasks such as basic research imply a greater federal role in this area. The fiscal 1979 budget substantially increased this function.[31] In addition, continued rising costs in higher education generate demands for additional relief for middle income families, as evidenced by proposals for tuition tax credits and the passage in 1978 of the *Middle Income Student Assistance Act*. Finally, the higher education policy subsystem can be expected to continue to gain strength. Because it became institutionalized only in the last 10 to 15 years, the subsystem's internal division, apparent in 1970s, may be merely a temporary reflection of its recent origins.[32]

On the other hand, a number of developments imply a smaller federal role in higher education. Most important are demographic changes which will cause declining enrollments over the next 15 years or so:

> Between 1980 and 1994, for example, there will be a 25% decline in the traditional college-age group. Barring other student clienteles, this decline could mean a drop in full-time equivalent enrollments of 1.8 million students during the period in question, resulting in a reduction in total faculty size of 100,000.[33]

Changes in the labor force may reinforce declining demand, as many fields requiring higher education may become saturated. In a different vein, there has also been erosion of the major rationales of federal assistance. In research, for instance, connection with defense no longer yields certain dollars. Space research has fallen sharply since the 1960s. In student aid, reverse discrimination controversies and cases, as well as middle income demands for financial relief, may indicate a weakening of broad citizen support for equal opportunity programs. Budgetary constraints have grown increasingly salient. All of these developments imply lower popular support for higher education programs, thus diminishing political incentives to develop new programs. Finally, facing increased regulation, federal grant recipients have grown more circumspect regarding federal aid. Their disillusionment may undermine a previous tendency to seek additional aid.

At the very least, these factors would suggest an unclear future facing federal aid to higher education.

FOOTNOTES

[1] Gladieux and Wolanin, *Congress and the Colleges*, p. 13. The entrepreneurial character of these Presidential innovations in educational policy is also suggested by Samuel Beer. He asserts that the decision by Presidents Kennedy and Johnson to stress educational programs in their legislative agendas gave "... a significant new imprint to public policy and present-day liberalism. ... Going over the main Kennedy programs ... I counted fully a third that made education in some form a central element. And, it hardly need be said, the priority given education has only increased under President Johnson." In Samuel Beer, "Liberalism and the National Idea," *Public Interest* 5, Fall 1966, pp. 162–163.

[2] King, *op. cit.*, p. 57. Gladieux and Wolanin agree that: "[Development of higher education policy in the Nixon Administration] was a largely self-contained exercise that took place almost entirely out of Congressional and public view, an extreme example of what has been called the 'secret legislative process of the executive branch.' " *Congress and the Colleges, op. cit.*, p. 59.

[3] *Ibid.*, p. xi.

[4] "It is clear that by the mid-1960s, federal policymaking for higher education had achieved the status of a policy arena. It had a basic legislative charter and specialized legislative, executive, and lobbying institutions all focused on the federal programs for general support to higher education." *Ibid.*, p. 183.

[5] Janet Hook, "Compromise Student-Loan Plan Voted by House-Senate Conferences," *op. cit.*, p. 17.

[6] Fishel and Pottker, *op. cit.*, p. 154.

[7] Freeman, *op. cit.*, pp. 222–223, 228.

[8] As head of the Women's Bureau, Peterson had been equally important in the formation of the President's Commission on the Status of Women in 1961. The Commission later gave rise to the Citizens Advisory Commission on the Status of Women and to the 50 state commissions. See *Ibid.*, p. 52.

[9] Fishel and Pottker, *op. cit.*, p. 2.

[10] This is equally true in the politics of spending. None of the case studies identified the Office of Education as an important source of policy initiatives. Despite expansion and the addition of major new program responsibilities in the last 20 years, it was long seen as hidebound and unimaginative. As Wolanin wrote in 1977: "Overload is the critical problem at the Office of Education. Created in 1867, it was for almost 100 years a quiet federal backwater. . . . But beginning as a steady stream in the 1950s and growing to a torrent in the 1960s, the Office of Education was deluged with new programs and responsibilities. An old line bureau, low in prestige, understaffed, with archaic management practices and a service orientation, was suddenly asked to undertake major responsibilities for operations on the cutting edge of a new domestic agenda." Thomas Wolanin, "Congress, Information, and Policymaking for Postsecondary Education," *Federalism at the Crossroads*, Washington, DC, Institute for Educational Leadership, George Washington University, 1977, p. 92.

[11] Interestingly enough, an identical pattern developed in the formulation of regulations to enforce Section 504. Mark Engebretson writes: "Given the opportunity to write on a clean slate in the area of discrimination against the handicapped, ORC elected to rely on its experience in enforcing statutes barring discrimination on the basis of race and sex, eventually drafting regulations paralleling earlier enactments." See Mark Engebretson, "Administrative Action to End Discrimination Based on Handicap: HEW's Section 504 Regulation," *Harvard Journal on Legislation* 16, Winter 1979, p. 89.

[12] Fishel and Pottker, *op. cit.*, p. 145.

[13] As Nie and Verba observe: "Studies have shown that Democrats do differ from Republicans on many issues, and such differences date back to early surveys before World War II. The differences have been clear, especially on the kinds of welfare and economic issues associated with the New Deal," pp. 194–195. Data presented on page 188 show that the correlation between "size of government" issues and party vote is stronger and more consistent than the correlation between most other issues. Norman Nie and Sidney Verba, *The Changing American Voter*, Cambridge, MA, Harvard University Press, 1976.

[14] Democratic platforms expressed full support for federal aid to education from 1944 on. Republican platforms explicitly opposed it as recently as 1952, but supported aid for classroom construction in 1956 and 1960. See Arthur Schlesinger, Jr., ed., *History of American Presidential Elections 1769–1968*, Vol. IV, New York, NY, McGraw-Hill, 1971, pp. 2955, 3040, 3044, 3152, 3278, 3290, 3373, 3393, 3495.

[15] "Interview: Ernest L. Boyer," *Educational Record* 61, Winter 1980, p. 5.

[16] Gladieux and Wolanin, "Federal Politics," pp. 208–211.

[17] Fishel and Pottker, *op. cit.*, p. 154.

[18] *Ibid.*, p. 133.

[19] Freeman, *op. cit.*, p. 230.

[20] See, for instance, Philip Meranto, *The Politics of Federal Aid to Education in 1965*, Syracuse, NY, Syracuse University Press, 1967, pp. 42–47, who compiled survey data on attitudes towards federal aid to education for various years between 1943–65. In all of these years, the percentage favoring federal aid fell below 65% only three times. Although additional data gathered by Frank Munger indicate that this popular support for the general concept of aid was soft (since it obscures important divisions among aid supporters on who should receive such aid and for what purposes), the enormously favorable public reaction to the passage of ESEA in 1965 suggests that, despite divided preferences, the public was willing to accept a broad range of aid alternatives. (In 1966, 90% of the public approved passage of aid to education. See Sundquist, *op. cit.*, p. 496.)

[21] Sundquist, *op. cit.*, p. 496.

[22] William Watts and Lloyd Free, eds., *State of the Nation*, New York, NY, Universe Books, 1973 and 1974, pp. 295, 324. In 1973, only 11% of respondents wanted federal spending for college scholarships reduced or ended, in 1974 only 5% did. The exact question reads: "Now I am going to read off the names of some programs the federal government in Washington is helping to finance. As I mention each program please tell me whether you feel the amount of tax money now being spent for each should be increased, kept at the present level, reduced, or ended altogether: Federal programs to make a college education possible for young people who could not otherwise afford it?"

[23] Fishel and Pottker, *op. cit.*, p. 137.

[24] Quoted in Rainsford, *op. cit.*, p. vi.

[25] An ACE statement 1969 maintained that: "A century ago responsibility for higher education might well have been regarded as a state or local concern. As we approach the end of the 20th Century higher education has become a national asset and a national responsibility. Our college-trained population has become so mobile that no individual state or region can be assured that its investment in advanced education will provide commensurate returns." (From Gladieux and Wolanin, *Congress and the Colleges*, pp. 44–45.) In *Financing Postsecondary Education in the United States*, the National Commission on Financing of Postsecondary Education similarly observes: "It is frequently argued that states may be unwilling to provide sufficient financing because they are concerned only with the interests of, and benefits to their own future residents and cannot be asked to respond to national work-force needs that are not evident locally." National Commission, *op. cit.*, p. 105.

[26] For example, the National Commission on the Financing of Postsecondary Education asserts: "To the extent that states try to meet their citizens' needs by providing low-price public collegiate institutions, they cause financial distress for private institutions, which they are often discouraged from aiding for political and constitutional reasons." *Ibid.*

[27] See Kingman Brewster, *op. cit.*

[28] Rober Bendiner, *Obstacle Course on Capitol Hill*, New York, NY, McGraw-Hill, 1964.

[29] Sundquist, *op. cit.*, p. 206.

[30] See also the opposition of former Rep. James O'Hara (D-MI) to proposals for reducing the public/private college tuition

gap, based on budgetary criteria. Gladieux and Wolanin, "Federal Politics," op. cit., p. 205.

[31] Thomas O'Toole, "Carter Vows to Beef Up Nation's Research Effort," *The Washington Post*, January 20, 1978, p. A6.

[32] According to one report, "Hill staffers who work on education bills mark 1972 as the turning point in the growth and sophistication of federal relations officers." Certainly the process of institutional representation is continuing to unfold. At least 100 educational institutions were reported to have opened their own Washington offices or hired Washington representatives by 1980. Commuting traffic has also grown. See Donald Baker and Bart Barnes, "College Lobbyists Flocking Here in Quest of Funds," *The Washington Post*, January 28, 1980, p. A1.

[33] Allan Cartter and Lewis Solomon, "Implications for Faculty," *The Financial State of Higher Education, 1976*, a special report by *Change* 8, September 1976, p. 37.

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